

EXHIBIT MMMM

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 JENNIFER S. FISCHMAN,
Plaintiff,

6 -against-

7 MITSUBISHI CHEMICAL HOLDINGS AMERICA,
8 INC.; MITSUBISHI CHEMICAL HOLDINGS
9 CORPORATION; NICOLAS OLIVA, in his
10 individual and professional capacities;
DONNA COSTA, in her individual and
professional capacities; and JOHN DOES
1-10, in their individual and professional
capacities,

Defendants.

11 - - - - -x

12 VIRTUAL ZOOM DEPOSITION

13
14 December 15, 2020

15 10:00 a.m.

16 VIRTUAL VIDEO ZOOM DEPOSITION of
17 JOSHUA BERMAN, in the above-entitled
18 action, held at the above time and place,
19 taken before Jeremy Richman, a Shorthand
20 Reporter and Notary Public of the State of
21 New York, pursuant to the Federal Rules of
22 Civil Procedure, and stipulations between
23 Counsel.

24
25 * * *

1
2 APPEARANCES:
3

VALLI KANE & VAGNINI LLP

4 Attorneys for Plaintiff

600 Old Country Road, Suite 519

5 Garden City, New York 11530

BY: MATTHEW BERMAN, ESQ.

6
7 CLARICK GUERON REISBAUM, LLP

8 Attorneys for Donna Costa

220 Fifth Avenue, 14th Floor

9 New York, New York 10001

BY: NICOLE GUERON, ESQ.

10
11 SHEARMAN & STERLING, LLP

Attorneys for Mitsubishi

12 401 9th Street, Suite 800

Washington, D.C. 20004

13 BY: GEORGE E. ANHANG, ESQ.

14
WHITE & CASE LLP

15 Attorneys for the witness,

Joshua Berman

16 1221 Avenue of the Americas

New York, New York 10020

17 BY: AMY DONEHOWER, ESQ.
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Cont'd):

GORDON REES SCULLY MANSUKHANI, LLP

Attorneys for Donna Costa,

Nicolas Oliva

One Battery Park Plaza

28th Floor

New York, New York 10004

BY: MERCEDES COLWIN, ESQ.

LAUREN MECABE, ESQ.

PRESENT:

DONNA COSTA

NICOLAS OLIVIA

MARCO SOZIO, Videographer

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by
and among counsel for the respective
parties hereto, that the filing, sealing
and certification of the within deposition
shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to form of
the question, shall be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same
force and effect as if signed and sworn to
before the Court.

* * *

1 J. BERMAN

2 THE VIDEOGRAPHER: Good

3 morning, we are going on the record
4 at 10:19 a.m. on December 15, 2020.

5 Please note that the microphones
6 are sensitive, and may pick up
7 whispering, private conversations
8 and cellular interference. Please
9 turn off all cell phones, or place
10 them away from the microphones, as
11 they can interfere with the
12 deposition audio. Audio and video
13 recording will continue to take
14 place unless all parties agree to
15 go off the record. This is media
16 unit one of the video recorded
17 deposition of Joshua Berman, taken
18 by counsel for the defendant in the
19 matter of Jennifer S. Fischman
20 versus Mitsubishi Chemical Holdings
21 America, Incorporated, Mitsubishi
22 Chemical Holdings Corporation,
23 Nicolas Oliva in his individual and
24 professional capacities, Donna
25 Costa in her individual and

1 J. BERMAN

2 professional capacities, and John
3 Does 1 through 10 in the individual
4 and professional capacities, filed
5 in the United States District
6 Court, Southern District of New
7 York, civil action number
8 18-CV-08188 (JMF.)

9 The deposition is being held
10 remote virtual Zoom located in
11 Scarsdale, New York 10583. My name
12 is Marco Sozio from the firm
13 Veritext New York, and I'm the
14 videographer. The court reporter
15 is Jeremy Richman, from the firm
16 Veritext New York.

17 I am not authorized to
18 administer an oath, I am not
19 related to any party in this
20 action, nor am I financially
21 interested in the outcome. Counsel
22 and all present in the room and
23 everyone attending remotely will
24 now state their appearances and
25 affiliations for the record. If

1 J. BERMAN

2 there are any objections to the
3 proceeding, please state them at
4 the time of your appearance,
5 beginning with the noticing
6 attorney.

7 MS. COLWIN: Good morning,
8 all. Mercedes Colwin from the Law
9 Offices of Gordon Rees. I am
10 present defending Nicolas Oliva,
11 Donna Costa and Mitsubishi Chemical
12 Holdings America. With me are my
13 colleagues Brittany Primavera and
14 Peter Siachos.

15 MR. ANHANG: My name is
16 George Anhang. Anhang is spelled
17 A-N-H-A-N-G. I'm with the law firm
18 of Shearman and Sterling. There
19 are two entities represented by
20 Shearman and Sterling in connection
21 with this matter. The first is
22 Mitsubishi Chemical Corporation,
23 the second is Mitsubishi Chemical
24 Holdings Corporation. My
25 appearance today is without waiver

1 J. BERMAN

2 of, and we expressly reserve all
3 rights with respect to all defenses
4 of our clients, including the
5 defense that the court in this
6 matter is without personal
7 jurisdiction over Mitsubishi
8 Chemical Holdings Corporation.
9 That defense is the subject of a
10 pending motion to dismiss by
11 Mitsubishi Chemical Holdings
12 Corporation.

13 MS. GUERON: Nicole Gueron,
14 Clarick Gueron Reisbaum. I
15 represent Donna Costa.

16 MS. DONEHOWER: Amy
17 Donehower, White & Case, LLP. I'm
18 here for the deponent, Josh Berman.

19 MR. BERMAN: This is Matthew
20 Berman, here for the plaintiff
21 Jennifer Fischman.

22 THE VIDEOGRAPHER: Is that
23 everyone?

24 MS. COSTA: Donna Costa,
25 defendant.

1 J. BERMAN

2 MR. OLIVA: Nicolas Oliva,
3 defendant, and as general counsel
4 of Mitsubishi Chemical Holdings
5 America.

6 THE VIDEOGRAPHER: Will the
7 court reporter please swear in the
8 witness.

9 JOSHUA BERMAN, having been
10 called as a witness, having first
11 been duly sworn by a Notary Public
12 (Jeremy Richman) of the State of
13 New York, was examined and
14 testified as follows:

15 THE VIDEOGRAPHER: Thank you,
16 we may proceed.

17 EXAMINATION BY

18 MS. COLWIN:

19 Q. Good morning, Mr. Berman. As
20 you know from my introductory remarks,
21 I'm the defense counsel here
22 representing Donna Costa, Nicolas Oliva
23 and Mitsubishi Chemical Holdings
24 America. You are present pursuant to a
25 subpoena that was issued by my office;

1 J. BERMAN

2 is that correct?

3 A. Yes.

4 Q. Now, I understand that you
5 received an attorney, so I'm not going
6 to go into the particulars about that
7 you are -- you understand the rules of
8 engagement in a deposition; is that
9 correct?

10 A. Yes.

11 Q. I want to flag some critical
12 parts of the process. One is that you
13 are sworn to tell the truth, correct?

14 A. Yes.

15 Q. And let us have an agreement.
16 I ask a question, you respond. It's
17 agreed between the two of us that you
18 understood the question, that you are
19 testifying to the best of your
20 recollection as you sit here today, and
21 that you're testifying truthfully; is
22 that understood?

23 A. I understand.

24 Q. Let's begin. Is there --
25 have you taken anything that could

1 J. BERMAN

2 affect your ability to recollect
3 events?

4 A. No.

5 Q. Have you taken anything that
6 can affect your judgment in any way?

7 A. No.

8 Q. Have you taken anything that
9 could affect your ability to tell the
10 truth during this proceeding?

11 A. No.

12 Q. Have you taken -- withdrawn.
13 Were you required to take
14 medication today that you have not
15 taken?

16 A. No.

17 Q. Okay. And as you know,
18 Mr. Berman, if you need to take a break
19 at any time, then please let us know,
20 and we can take that break, but all I
21 ask is that you not take a break during
22 the pendency of a question. Is that
23 understood?

24 A. It's understood.

25 Q. All right. Mr. Berman, what

1 J. BERMAN

2 is your full legal name?

3 A. Joshua A. Berman.

4 Q. Have you been known by any
5 other legal name?

6 A. No.

7 Q. You are currently employed by
8 White & Case, are you not?

9 A. I am.

10 Q. And how long have you been
11 employed by White & Case?

12 A. Nearly four years.

13 Q. And you're a partner,
14 correct?

15 A. Correct.

16 Q. Prior to White & Case, where
17 were you practicing?

18 A. Troutman Sanders, LLP.

19 Q. Do you have a specialization
20 in your current position as partner at
21 White & Case?

22 A. Litigation and disputes.

23 Q. And in your prior
24 partnership, what was your -- were you
25 a partner as well?

1 J. BERMAN

2 A. I was.

3 Q. And at Troutman, what was
4 your specialization, if anything?

5 A. The same.

6 Q. How long did you work there?

7 A. Four years, give or take.

8 Q. And under what circumstances
9 did your employment with the firm end?

10 A. I got an offer to join White
11 & Case, which was very attractive to
12 me, and I accepted that offer and made
13 the move.

14 Q. Have you spoken to Jennifer
15 -- withdrawn.

16 You know Jennifer Fischman,
17 do you not?

18 A. I do.

19 Q. You consider her a friend,
20 correct?

21 A. Certainly friendly.

22 Q. Your children socialize with
23 hers?

24 A. They know one another, you
25 know, the high school is a big high

1 J. BERMAN

2 school. So they're not in the same
3 friend group, but they know who one
4 another is, for sure.

5 Q. Have you spoken to
6 Ms. Fischman about this deposition?

7 A. No.

8 Q. Have you ever spoken to her
9 about the complaint that's at issue
10 here?

11 A. In very broad strokes, I'm
12 aware that she is maintaining a
13 lawsuit. Not specifically about the
14 complaint, no.

15 Q. Did you ever have any
16 substantive discussion with
17 Ms. Fischman about your deposition? I
18 understand that you may not have spoken
19 to her specifically, but the substance
20 of your testimony today, have you ever
21 had a discussion with Ms. Fischman?

22 A. Why don't you ask me that at
23 the end? I think the answer is no.

24 Q. Have you had -- what did you
25 do in preparation -- withdrawn.

1 J. BERMAN

2 You spoke to your counsel,
3 that's Amy Donehower, correct?

4 A. That's correct.

5 Q. When did you first meet
6 Jennifer Fischman?

7 A. Oh, boy. Let me just do some
8 math in my head. If Zach is 15, I
9 would say five to seven years ago.

10 Q. You mentioned your son, so
11 you met through your children; is that
12 correct?

13 A. Our children attended Hebrew
14 school together, and there were monthly
15 parent sessions, and Jennifer and I sat
16 next to one another during some Sunday
17 morning religious school services and
18 became friendly, you know, we would
19 just chat during those.

20 Q. Have you socialized with
21 Ms. Fischman outside of what you just
22 described?

23 A. A few times over this period
24 of five years, maybe three or four.
25 And certainly not in the past while.

1 J. BERMAN

2 My wife Lisa and I had dinner with
3 Jennifer and her husband, Lee.

4 Q. Is that recent, when was the
5 last time you socialized with Jennifer
6 and her husband -- Ms. Fischman and her
7 husband, rather?

8 A. I would guess more than a
9 year ago. But I would have to look at
10 the -- I think I would have to ask Lisa
11 to look at her calendar.

12 Q. You both -- do you live near
13 Ms. Fischman? We understand from your
14 testimony that your children had
15 attended Hebrew school together.

16 A. We both live in Scarsdale,
17 but we live in different neighborhoods,
18 if you will, of Scarsdale. So I think
19 it's probably a 15-minute drive, or
20 12-minute drive from my house to hers.

21 Q. Have you gone to her home?

22 A. Once for a barbecue years
23 ago.

24 Q. Now, did you ever have a
25 discussion with Ms. Fischman about her

1 J. BERMAN

2 decision to return to New York after
3 being in California for a period of
4 time?

5 A. I believe so.

6 Q. Did you know Ms. Fischman at
7 the time that you had made the
8 decision, or was this discussion after
9 she had returned to New York?

10 A. After the fact.

11 Q. When did you last speak to
12 Ms. Fischman?

13 A. I'm trying to think. Quite a
14 while ago, before the summer.

15 Q. Now, there came a time when
16 Ms. Fischman hired you to work on
17 matters for Mitsubishi; is that right?

18 A. Yes.

19 Q. When was the first time that
20 you worked with Ms. Fischman?

21 A. It would have been around,
22 just flipping through, yeah, it would
23 have been, I think in the fourth
24 quarter of 2016, probably late in the
25 third quarter.

1 J. BERMAN

2 Q. Now, we just want to note for
3 the record that you were looking at
4 documents. What document in particular
5 were you looking at to respond to this
6 question?

7 A. Yeah, literally tab two of
8 the exhibits you sent. I just wanted
9 to see -- I just wanted to make sure I
10 was getting the year correct. In the
11 months leading up to Labor Day, so the
12 summer, I just wanted to make sure it
13 was 2016, rather than 2017.

14 Q. So that in the document that
15 you're looking at refers to the
16 Genomatica litigation, correct?

17 A. Correct.

18 MR. BERMAN: Hey, Counsel, is
19 the witness looking at exhibits
20 that were provided? Because I have
21 not received any exhibits.

22 MS. COLWIN: Let's introduce
23 Exhibit 1.

24 MR. BERMAN: Are these
25 materials that have been provided

1 J. BERMAN

2 to the deponent?

3 MS. COLWIN: Yes, they were
4 provided in hardcopy, in a sealed
5 envelope.

6 THE WITNESS: They were just
7 a courtesy copy for me, I believe.
8 Sorry, I should let counsel say
9 that.

10 MR. BERMAN: Okay, I just
11 wanted to make sure that any
12 materials provided to the deponent
13 have been disclosed to us,
14 regardless of whether they're
15 ultimately introduced into evidence
16 or not.

17 MS. COLWIN: All the
18 documents that have been provided
19 to counsel -- to Mr. Berman are
20 going to be introduced. So we're
21 going to introduce Exhibit 1, which
22 is the document that Mr. Berman was
23 just referring to.

24 MR. BERMAN: Okay, I just
25 want to note for the record my

1 J. BERMAN

2 request that all such documents
3 provided to the deponent be
4 disclosed to us, regardless of
5 whether they end up being
6 introduced today, or if you should
7 decide within your discretion not
8 to introduce an exhibit, we would
9 still like to make sure we receive
10 a copy disclosed to us, thank you.

11 MS. COLWIN: Could I just
12 ask, right now my screen is the
13 exhibits. Could I just ask for the
14 identity of the individual who was
15 just speaking?

16 MR. BERMAN: That's Matthew
17 Berman for plaintiff.

18 MS. COLWIN: Thank you, Matt.

19 A. I'm afraid I opened a can of
20 worms. Had I given it a more careful
21 think, I could have told you that it
22 was around summer of 2016 without
23 glancing at the document, just my
24 nature to be extra sure.

25 MS. COLWIN: While we're

1 J. BERMAN

2 waiting for the exhibit to come up,
3 and Matt, just so that you know,
4 Exhibit 1 is the complaint at
5 issue, Exhibit 2 is an email
6 communication, all of which, all of
7 the exhibits that we are referring
8 to today have been previously
9 marked, and I will identify them as
10 marked and disclosed during the
11 course of discovery. So I'll make
12 sure that with each exhibit, that
13 the Bates stamp is identified as
14 well, so there are no surprises
15 here for anyone.

16 MR. BERMAN: Perfect, I
17 appreciate that. Thank you,
18 Counsel.

19 Q. While we are waiting for the
20 exhibits to upload, Mr. Berman, I just
21 want to go back. So is the Genomatica
22 litigation the first time that you had
23 learned of Mitsubishi?

24 A. No, I mean, I know of
25 Mitsubishi Chemical Corporation just

1 J. BERMAN

2 from experience in the business world,
3 as an important multinational
4 Japan-based conglomerate, but it's the
5 first time that I ever did work for
6 them.

7 Q. Okay. Was it the first time
8 that your firm had ever done work for
9 Mitsubishi?

10 MS. DONEHOWER: I want to
11 jump in here -- Mr. Berman's answer
12 may implicate some privileged or
13 confidential information. I want
14 to make sure we are taking
15 direction from defendants about
16 whether or not he's permitted to
17 answer that question, to the extent
18 he knows.

19 MR. ANHANG: I'm happy to
20 clarify. For the record, this is
21 George Anhang, and on behalf of
22 Mitsubishi Chemical Corporation, I
23 instruct the witness, in answering
24 the present question and other
25 questions today, not to reveal any

1 J. BERMAN

2 confidential client communications
3 or work product with respect to his
4 representation of Mitsubishi
5 Chemical Corporation, except that
6 the witness today may, in his
7 answer to the present question and
8 other questions, refer to client
9 communications regarding the
10 settlement of the Genomatica action
11 that is the subject of this action.

12 A. Ms. Colwin, are you referring
13 to Troutman Sanders or White & Case, or
14 both?

15 Q. We're just reflecting your
16 time at Troutman Sanders at the present
17 moment. We'll get back to whether or
18 not you have a continuing relationship
19 with Mitsubishi towards the end.

20 A. I don't know if Troutman
21 Sanders had ever done work for
22 Mitsubishi Chemical Corporation prior
23 to my working on the Genomatica matter.

24 Q. In your current role as
25 partner in White & Case, do you

1 J. BERMAN

2 continue to have a working relationship
3 with Mitsubishi?

4 A. I do.

5 Q. And there are matters that
6 you are handling for them currently?

7 A. I have two matters for
8 Mitsubishi Chemical Composites America,
9 and as luck would have it, there are a
10 few kind of tail-end cleanup items
11 still pertaining to the Genomatica
12 lawsuit that come up once every six
13 months, and relate only to the clerical
14 act --

15 MS. DONEHOWER: Mr. Berman,
16 let's not get into the details of
17 what it states without MCC's
18 direction.

19 A. Very, very limited clerical
20 issues that are ongoing from the
21 settlement of Genomatica.

22 Q. Okay. We are having the --
23 we're waiting for the exhibits to
24 populate. While they are, I just want
25 to focus for a moment, before we get to

1 J. BERMAN

2 the -- to Exhibit 2, which is what you
3 had referred to in answering the
4 question as to when you were hired for
5 Genomatica. Let me just focus for a
6 moment on the complaint that
7 Ms. Fischman has brought against the
8 entities that are involved in today's
9 proceeding.

10 (Exhibit 1, marked for
11 identification, First amended
12 complaint jury trial demand.)

13 Q. When did you first learn
14 about this lawsuit that's at issue
15 today?

16 A. When Jennifer told me about
17 it.

18 Q. Do you remember when that
19 was?

20 A. Like I said, I believe to the
21 best of my recollection, I would say Q3
22 or early Q4 of 2016.

23 Q. Okay. We are now going to --
24 I would ask you to take a look at the
25 second exhibit you have in front of

1 J. BERMAN

2 you. It's the first amendment
3 complaint. We're going to populate it
4 for everyone at the deposition at this
5 very moment.

6 A. The first amended complaint
7 is the first exhibit I have, it's tab
8 1.

9 Q. Had you ever seen this
10 complaint prior to today?

11 A. No. Well, yesterday, when I
12 got the packet of documents, I
13 literally physically saw it, but I
14 didn't read it.

15 Q. Okay. Have you ever
16 discussed any particulars with
17 Ms. Fischman? I understand you didn't
18 read the complaint, but had you
19 discussed any of the particulars of the
20 complaint with Ms. Fischman at any
21 point prior to today?

22 A. I can't discuss that without
23 reading the complaint, because I don't
24 know what's in there.

25 Q. Did you discuss any of the

1 J. BERMAN

2 allegations that you believed
3 existed -- exist in the amended
4 complaint in your discussions with
5 Ms. Fischman?

6 A. I'm really hesitant to
7 speculate as to what's in the complaint
8 without having read it. Go ahead, I'm
9 sorry.

10 Q. I was going to ask a question
11 related to the same, but to see, were
12 there any conversations that you had
13 with Ms. Fischman pertaining to
14 allegations that may or may not be
15 existing in the complaint, but
16 allegations in general against
17 Mitsubishi Holdings America, Donna
18 Costa and Nick Oliva?

19 A. Yes.

20 Q. And what were those
21 discussions?

22 A. Just at a very high level of
23 generality, that she was seeking
24 redress for being terminated by -- I
25 didn't know which defendants were on

1 J. BERMAN

2 the caption, so I'll just refer to it
3 as Mitsubishi. She was seeking legal
4 redress for being terminated by
5 Mitsubishi. I'm not sure, again, which
6 entity, but that was really it.

7 Q. Was it a single conversation,
8 or were there multiple conversations
9 that Ms. Fischman disclosed the general
10 nature of her allegations against
11 Mitsubishi, et al.?

12 A. I'm just not sure.

13 Q. Was it more than once that
14 you had a conversation with her?

15 A. Probably, but I don't want to
16 be misleading and say, like, we had a
17 conversation centered around that. It
18 would have been -- first of all, I'm
19 not sure if it was more than one.
20 Second of all, it would have been,
21 like, at a restaurant with our
22 respective spouses, and not a main
23 topic of conversation, just in passing
24 like, Yeah, I'm pursuing legal action.
25 I said, You know, it's a sort of a

1 J. BERMAN

2 bummer of a situation and I'm sorry to
3 hear about these matters. But we've
4 never gotten into the nitty-gritty of
5 this.

6 Q. Did you ever disclose to
7 Ms. Fischman that you had an ongoing
8 and continuing relationship with
9 Mitsubishi?

10 A. I think she knew without me
11 having to disclose that.

12 Q. And what is the basis for
13 your belief that that's so?

14 A. One of the ongoing matters,
15 and I'll be careful with privilege
16 here, for a U.S.-based Mitsubishi
17 company, Jennifer discussed with me
18 briefly prior to the events, I guess,
19 in question, relative to her
20 termination, and then that matter
21 turned into a litigation matter.

22 Q. Okay. We've mentioned
23 Mr. Oliva's name a couple of times
24 during your testimony today. You know
25 Mr. Oliva, do you not?

1 J. BERMAN

2 A. I do know him.

3 Q. And how did you first meet
4 Mr. Oliva?

5 A. Through the Genomatica matter
6 as well, and in particular, Mr. Oliva
7 and I attended an early neutral
8 mediation session in San Diego,
9 California together before a federal
10 magistrate judge, and we spent a day in
11 preparation, went to dinner together,
12 and then we attended the mediation.

13 Q. Was that the first time you
14 met Mr. Oliva, was through the
15 Genomatica litigation?

16 A. Yes. Let me just clarify, I
17 may have had a telephone conversation
18 before that. I believe that was the
19 first time I met Mr. Oliva in person.

20 Q. Has Ms. Fischman ever
21 discussed Mr. Oliva with you?

22 A. Yes.

23 Q. And what did she say about
24 him?

25 A. That he had been at Bristol

1 J. BERMAN

2 Myers, that he was brought into -- she
3 had been acting general counsel at
4 MCHA, and that Nick was brought in to
5 take over the full-time general counsel
6 role. And that he was a good boss.

7 Q. Okay. Has Mr. Oliva ever
8 spoken to you about Ms. Fischman in
9 terms of her separation from the
10 company?

11 A. Only at a very high level,
12 and I believe saying that he wanted to
13 be careful not to put me into an
14 uncomfortable position. No. Sorry,
15 I'm trying to remember, these are a
16 number of years ago, and I know how
17 frustrating that is sitting at your end
18 of the table. To the best of my
19 recollection, I never had a detailed
20 discussion with Mr. Oliva about these
21 matters. Just at a very high level,
22 this happened -- oh, know what, sorry,
23 I talked myself into remembering.

24 When Ms. Fischman was
25 terminated, Mr. Oliva called me and

1 J. BERMAN

2 said, I just want to let you know this
3 is happening and, you know, so you're
4 not surprised, you know, you and I will
5 be working together on the, I guess
6 conclusion of Genomatica.

7 Q. Okay.

8 A. But that was it. He
9 certainly didn't get into his various
10 reasons and anything of that nature, to
11 the best of my recollection.

12 Q. In your interactions with
13 Mitsubishi employees, has anyone ever
14 complained to you about Mr. Oliva?

15 A. No.

16 Q. In your discussions with
17 Ms. Fischman, did she ever say to you
18 that she felt she had been punished at
19 Mitsubishi at any point?

20 A. I don't believe so. You're
21 asking if she told me she was
22 specifically punished, I don't believe
23 so.

24 Q. Did Ms. Fischman ever discuss
25 with you about Mr. Oliva's abilities as

1 J. BERMAN

2 an attorney?

3 A. I think she regarded him
4 highly, but I can't point you to a
5 special date or conversation.

6 Q. Okay. I'm going to call your
7 attention to the Genomatica litigation.

8 A. Okay.

9 Q. Were you the primary outside
10 counsel at Troutman Sanders responsible
11 for Genomatica?

12 A. Yes.

13 Q. Was there anyone else
14 involved in the litigation with you
15 from your firm?

16 A. My associate and current
17 colleague, Suzie Grace.

18 Q. Who interfaced with
19 Ms. Fischman?

20 A. I would say I did, and Suzie
21 may have had a few conversations or
22 emails with Ms. Fischman, I just don't
23 know. But I would have been, by far,
24 the primary point of contact.

25 Q. In terms of communications

1 J. BERMAN

2 with opposing counsel, were you the
3 primary partner that was responsible
4 for that in the Genomatica litigation?

5 A. I was the only partner
6 responsible for that.

7 Q. Who did you represent?

8 A. Mitsubishi Chemical
9 Corporation.

10 Q. And who was the client
11 contact in the Genomatica litigation?

12 A. Jen.

13 Q. When you say Jen, you mean
14 Jennifer Fischman?

15 A. Sorry, Jennifer Fischman, but
16 we did speak with Mr. Minami Tomoji,
17 and Masaru Utsunomiya, who we referred
18 to as Utsunomiya-san.

19 Q. Could you tell us the general
20 nature of the Genomatica litigation?

21 A. Yes. At a high level,
22 Mitsubishi Chemical Corporation entered
23 into a venture, I don't know if it was
24 formally captioned a joint venture with
25 Genomatica, which was, in essence, a

1 J. BERMAN

2 green energy type company, and
3 Mitsubishi had paid a sum of money in
4 advance to Genomatica. And the
5 contract between the two parties, that
6 is Genomatica on the one hand and
7 Mitsubishi Chemical Corporation on the
8 other hand, called for the return of a
9 portion of Mitsubishi's cash payment if
10 Genomatica failed to meet certain, I
11 believe, business and scientific
12 milestones by a date certain.
13 Genomatica failed to meet those
14 deadlines. The contract, to the best
15 of my recollection, was clear and
16 unambiguous on its face, and Mitsubishi
17 business folks in Japan had tried in
18 good faith for months, if not a year,
19 to successfully obtain the return of
20 Mitsubishi's money from Genomatica, but
21 Genomatica was exceptionally evasive,
22 and they weren't returning Mitsubishi's
23 money, in violation of the party's
24 contract.

25 Q. Mr. Berman, who was your

1 J. BERMAN

2 contact at Mitsubishi Chemical Holdings
3 America, was that just Ms. Fischman?

4 A. Yes. Subsequently Mr. Oliva,
5 but Ms. Fischman initially.

6 Q. And was it your understanding
7 that Ms. Fischman was managing the
8 litigation for MCC? We're going to use
9 the acronym.

10 A. I think that's a fair
11 assessment, yes.

12 Q. How would you describe it in
13 your own words, what Ms. Fischman's
14 role was in the Genomatica litigation?

15 A. She was in-house counsel,
16 that's how I looked at it. I'm aware
17 there are different entities, but
18 contemporaneously, my understanding
19 was, she was, you know, based in the
20 U.S., I think still is, and was serving
21 as in-house counsel from whom I took
22 direction and talked about the case,
23 and not unlike any of the other, you
24 know, in-house litigators or in-house
25 general counsels with whom I work, I

1 J. BERMAN

2 wasn't focused on the fact that
3 Ms. Fischman was technically an
4 employee of X entity or Y entity.

5 Q. You mentioned moments ago
6 under oath that Mr. Oliva also had a
7 role in the Genomatica litigation, and
8 at one point pursuant to your
9 testimony, he was the primary contact
10 for you at MCHA regarding Genomatica.

11 What was Nick's involvement
12 in the Genomatica litigation? And if
13 it changes over time, and obviously,
14 from your testimony, it will, describe
15 that for us?

16 MS. DONEHOWER: I just want
17 to jump in and say, Josh, be
18 careful that we are only talking
19 about client communications
20 regarding the settlement, as per
21 Mr. Anhang's direction.

22 A. I understand. So broadly,
23 when Jennifer and I kind of kicked off
24 the litigation, I was aware that Nick
25 was the general counsel, and so that's

1 J. BERMAN

2 the highest you can get within an
3 organization's legal function. So I'm
4 not sure whether I assumed or whether
5 it was explicitly communicated, but I
6 knew that Nick, you know, sort of sat
7 on top of the pyramid in the litigation
8 function, and was aware of the
9 litigation and so forth. But Jennifer
10 was responsible for the day-to-day in
11 terms of the in-house counsel roles,
12 and I assume that's because Nick had,
13 you know, a ton on his plate, and had
14 various deputies who were either
15 responsible for litigation or M&A or
16 tax matters or employment, and so I
17 dealt with Jennifer knowing that Nick
18 was the general counsel.

19 Subsequently, I believe it
20 was in or around November of 2017 --
21 no, it was, I'm sorry, it would have
22 been earlier than that. At any rate,
23 shortly after I joined White & Case,
24 which was in February of 2017, when
25 these events transpired as between

1 J. BERMAN

2 Ms. Fischman and the company, Nick
3 really took over the day-to-day in
4 place of Ms. Fischman. And so he
5 functioned as both the general counsel,
6 and I know that he had other
7 responsibilities, but he sort of, if
8 you will, rolled his sleeves up and got
9 involved with this particular case and
10 our efforts to get a good result.

11 Q. So Mr. Berman, just to orient
12 your memory, because I would like to
13 have a specific date of the November
14 time frame you just testified about,
15 the offer made to Genomatica was on
16 January 6, 2017.

17 Now, going back to your
18 testimony, you have identified November
19 as a time in which Mr. Oliva had become
20 more involved in the Genomatica
21 litigation. If I'm phrasing your
22 testimony incorrectly, please say so
23 and just --

24 A. No, you're -- sorry, go
25 ahead. You're phrasing it correctly.

1 J. BERMAN

2 I must have my dates wrong, because
3 Nick didn't become involved day-to-day
4 until the early neutral mediation, or
5 it could have been before that. But he
6 didn't become day-to-day until
7 Ms. Fischman was let go, and I don't
8 know when that was. But if we go
9 through these documents, I'm sure it
10 will refresh my recollection.

11 Q. We will bookmark that and
12 come back to it.

13 A. Okay.

14 Q. Did you ever communicate
15 directly with MCC?

16 A. I did, but only with
17 Ms. Fischman on the phone.

18 Q. Did you ever communicate
19 directly with MCHC?

20 A. I don't know, because I don't
21 know who wore what hats, and I have
22 only a dim understanding of what MCHC
23 is, to begin with.

24 Q. Did you ever have a
25 conversation with any Mitsubishi -- I'm

1 J. BERMAN

2 just focusing your attention on
3 Genomatica. Did you ever have any
4 discussion with anyone outside of
5 Ms. Fischman at Genomatica during the
6 pendency of the Genomatica litigation
7 other than Ms. Fischman, and you
8 already identified Mr. Oliva. Other
9 than those two, were there any other
10 conversations you had with individuals
11 pertaining to Genomatica?

12 A. At MCA or MCC?

13 Q. We can start with MCC.

14 A. Well, I think I said earlier
15 that I spoke, together with
16 Ms. Fischman, on a number of occasions,
17 with Tomoji and Utsunomiya-san. I
18 don't believe I ever spoke to
19 Takimoto-san or Sakiguchi-san, but I
20 was aware they were stakeholders, if
21 you will, in the outcome. And
22 subsequently, I spoke to Nick about
23 this, but I think that's it.

24 Q. Was there ever a time that
25 you had a conversation during the

1 J. BERMAN

2 pendency of the Genomatica litigation
3 where you had conversations with anyone
4 at MCC without the presence of Jennifer
5 Fischman?

6 A. To the best of my
7 recollection, no.

8 Q. Was there ever a time that
9 you had a conversation with individuals
10 from MCC pertaining to the Genomatica
11 litigation outside the presence of
12 Mr. Oliva?

13 A. Yes, I mean, the
14 conversations that I had with Jennifer
15 and the folks back in Japan did not
16 include Mr. Oliva. But subsequent to
17 Nick taking the reins, if you will, we
18 spoke then, either he spoke to MCC or
19 we together spoke to MCC.

20 Q. I just want to make sure the
21 record is clear. Was there ever an
22 occasion where you spoke to MCC, it
23 went -- following separation, the
24 Fischman separation from MCHA, where
25 then Mr. Oliva was not present?

1 J. BERMAN

2 A. Not to the best of my
3 recollection, no.

4 Q. Did Mr. Oliva ever provide
5 you with any direction during the
6 pendency of the Genomatica litigation?

7 A. Sure, I mean, Nick is a
8 really sharp lawyer, and so we worked
9 together to, you know, do all that we
10 could to obtain a successful outcome
11 for MCC. So for example, at the early
12 neutral mediation, there was shuttle
13 diplomacy, if I call. The magistrate
14 split up the sides as we were
15 negotiating, and Nick has a very steady
16 demeanor, and we would have
17 conversations about whether to respond
18 to X or Y offer, and I have a general
19 recollection, without being able to
20 quote specific sentences, that Nick's
21 guidance was, let's essentially try to
22 hold firm. And then it was Nick's
23 call, I guess together with the folks
24 in Japan, when we ultimately reached --
25 agreed to a deal. But maybe that's

1 J. BERMAN

2 more detail than you want.

3 Did Nick ever provide me
4 guidance, yes.

5 Q. What instructions did you
6 receive from Ms. Fischman during the --

7 MR. BERMAN: Ms. Colwin, I'm
8 informed that Ms. Fischman is
9 trying to participate in the call
10 unsuccessfully. Could we maybe
11 pause momentarily and see if we can
12 get Veritext to help her join in?

13 A. May I, without going off the
14 record, go fill my coffee cup?

15 THE VIDEOGRAPHER: I need to
16 take us off the record, stand by.
17 Off the record at 11:01 a.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are now
20 on the record. The time is
21 11:08 a.m.

22 Q. Mr. Berman, you received
23 instructions from Ms. Fischman
24 pertaining to the Genomatica
25 litigation, correct?

1 J. BERMAN

2 A. Yes.

3 Q. What were those instructions,
4 to the best of your recollection, and
5 how you were to handle that litigation?

6 MS. DONEHOWER: I would like
7 to take direction from Mr. Anhang,
8 thank you.

9 MR. ANHANG: Thanks, Amy.
10 I'm just going to repeat what I
11 said before. I'm not going to do
12 that throughout the deposition
13 today, but let me just once again
14 say on behalf of Mitsubishi
15 Chemical Corporation, that I
16 instruct the witness, in answering
17 the present question and all other
18 questions today, not to reveal
19 confidential client communications
20 or work product with respect to his
21 representation of Mitsubishi
22 Chemical Corporation, except that
23 the witness may, in answering the
24 present question and other
25 questions today, refer to client

1 J. BERMAN

2 communications regarding the
3 settlement of the Genomatica action
4 that is the subject of the present
5 litigation.

6 A. So Ms. Colwin, this is
7 difficult to answer, because obviously
8 the settlement conversations didn't
9 commence instantly. The first
10 conversations I had with Ms. Fischman
11 relative to the lawsuit were connected
12 to the contract and the substance of
13 the dispute and the objectives in
14 potentially initiating litigation. So
15 I think I've been -- if I understand
16 the privilege issues, even at a
17 rudimentary level, I think I've been
18 instructed not to answer that.

19 MS. DONEHOWER: You can
20 answer the directions that
21 Ms. Fischman gave you with respect
22 to the settlement of the Genomatica
23 matter, to the extent that's the
24 question.

25 Q. I'm going to rephrase my

1 J. BERMAN

2 question in consideration of what
3 co-counsel has raised.

4 When talking about the
5 general tone and direction of the
6 litigation that you were involved in,
7 protecting the interests of MCC, were
8 you given instructions by Ms. Fischman?
9 I'm not talking about the specifics,
10 I'm not asking for --

11 A. Yes.

12 Q. What were those instructions?

13 A. Well, one thing is that
14 Ms. Fischman was careful to note that
15 there's a certain business culture in
16 Japan of unfailing courtesy, which is
17 something I was familiar with
18 independently. And there was very
19 important -- Tony Stiegler, my
20 adversary --

21 MS. DONEHOWER: Mr. Berman,
22 is this limited to the settlement
23 communications?

24 THE WITNESS: I think so, I
25 believe so. It was important, even

1 J. BERMAN

2 in negotiating a potential deal,
3 and even if Mr. Stiegler can be
4 quite provocative in the tone of
5 his emails, not to respond in kind,
6 but rather to maintain courtesy and
7 equanimity in my communications.
8 That was one instruction. And then
9 it's difficult for me to answer
10 beyond that, unless you ask me more
11 specific questions. That was at a
12 high level.

13 Q. I will.

14 A. Okay.

15 Q. And did you receive
16 instructions from Mr. Oliva about the
17 manner in which to conduct yourself
18 during the course of the Genomatica
19 litigation with respect to tone and
20 strategy?

21 A. Limiting my answer to
22 settlement, there are two high-level
23 instructions that I recall receiving
24 from Mr. Oliva. One was to the same
25 effect, making sure that we comported

1 J. BERMAN

2 ourselves in a way that was consistent
3 with Mitsubishi standards at all times,
4 even if opposing counsel was, as I
5 said, provocative, and had more of an
6 American streetfighter kind of
7 demeanor. And then Mr. Oliva and I had
8 conversations about sort of staying the
9 course and believing in the rightness
10 of our position, and so in the context
11 of settlement, holding firm until
12 Genomatica and counsel came, brought
13 their offer up to a level that was
14 acceptable to MCC and to Mr. Oliva
15 based on their objectives.

16 Q. Were you aware of any
17 conversations that Ms. Fischman had
18 with MCC without your attendance during
19 the pendency of the Genomatica
20 litigation?

21 A. Am I aware that they
22 occurred, or am I aware of what was
23 said?

24 Q. Both. Were you -- well, one
25 bleeds into the other. Were you aware

1 J. BERMAN

2 that there were communications between
3 Ms. Fischman and MCC where you were not
4 in attendance?

5 A. I can't say with certainty,
6 but I certainly believe that
7 Ms. Fischman was in contact with the
8 individuals at MCC who had a stake in
9 the matter, and I believe so. I
10 believe I was aware of that. I just
11 want to not testify with certainty to
12 something that I'm not a hundred
13 percent certain about.

14 Q. Did you, in conversations
15 with Ms. Fischman, understand that she
16 was having conversations with MCC
17 without your attendance, and relaying
18 information to you thereafter?

19 MS. DONEHOWER: Limited, per
20 Mr. Anhang, to settlement
21 discussions.

22 A. I'm just not sure of the
23 answer relative to settlement
24 discussions. Being very careful to
25 limit my answer to that topic. Again,

1 J. BERMAN

2 I believe so, but I can't testify with
3 absolute certainty.

4 Q. What was your understanding
5 as to the general strategy that you
6 were to take with respect to
7 Genomatica?

8 MS. DONEHOWER: Limiting your
9 answer to settlement discussions.

10 A. I don't know that it was --
11 one, we wanted to get as high a number
12 -- high amount of cash back as
13 possible. Two, we wanted to make sure
14 that settlement negotiations didn't
15 tank as a consequence of any perceived
16 discourtesy on our part from the other
17 side. So obviously, we didn't have a
18 magic wand and we couldn't force
19 Genomatica to pay or make a settlement
20 of X dollars, but there was, we wanted
21 to be very careful that if settlement
22 negotiations did not succeed, that
23 wouldn't be a consequence of sort of
24 our slighting Genomatica or its
25 counsel. And they were, you know,

1 J. BERMAN

2 obviously the initial offers made by
3 Genomatica were what we would all refer
4 to in vernacular as low-ball, and so
5 they were sort of nonstarters, and
6 there came a point in time in which
7 Genomatica, through its counsel, began
8 to make more serious offers. And the
9 objective was to get the best deal we
10 could while minimizing, you know, the
11 legal spend associated with litigation.

12 Q. Is that consistent with your
13 understanding as to what the client
14 MCC's goal was in the Genomatica
15 litigation?

16 A. I believe that the client
17 hoped that the pressure exerted by
18 litigation activity would drive --
19 would be a settlement driver. And so
20 the hope was to resolve the matter
21 amicably, but the understanding, again,
22 I believe -- this is all to the best of
23 my recollection, it's been some
24 years -- was that the hope was to avoid
25 protractive litigation that would

1 J. BERMAN

2 become expensive.

3 Q. Were you aware at some point
4 during the course of the Genomatica
5 litigation that Minami Tomoji had
6 raised concerns about the handling of
7 the case, specifically at or around
8 September of 2019?

9 MS. DONEHOWER: Mr. Anhang,
10 can you please give us direction on
11 whether Mr. Berman can answer that
12 question?

13 MR. ANHANG: He can.

14 A. Not until I got your packet
15 of documents.

16 MR. BERMAN: Please note my
17 objection to the form of the
18 question, thank you.

19 Q. Let me -- we're going to
20 share exhibit -- we're just uploading
21 it to share with the rest of the group,
22 just be a moment.

23 (Exhibit 2, marked for
24 identification, Bates stamped Def
25 001419.)

1 J. BERMAN

2 Q. Mr. Berman, I ask you, I know
3 you have hardcopies. If you could just
4 take a moment and review the exhibit,
5 which is Exhibit 2 for identification,
6 I want to note for the record that
7 Exhibit 2 is Bates stamped Def 1419 to
8 Def 1421.

9 A. Okay, and just to confirm,
10 what I see on the screen is what I have
11 before me in hardcopy. Do you want me
12 to review the entirety of the email
13 string?

14 Q. Yes, just Exhibit 2, which
15 would be 1419 to 1421.

16 A. Okay, I understand, give me a
17 second, please.

18 Q. Sure.

19 A. Sorry, my phone beeped. I'm
20 shutting it off.

21 Q. Mr. Berman, let us know when
22 you've completed your review.

23 A. It's a little hard, because
24 there's portions of sentences redacted,
25 so I'm trying to -- okay, I read it

1 J. BERMAN

2 now.

3 Q. Thank you, Mr. Berman. Were
4 you aware that Takimoto-san had issues
5 with the way the Genomatica issue was
6 being handled by you and Ms. Fischman?

7 A. Not at the time.

8 MR. BERMAN: Note my
9 objection to the form of the
10 question.

11 Q. Did you -- at what point in
12 time did you become aware that there
13 were concerns in the matter in which
14 the Genomatica litigation was being
15 handled?

16 A. I guess when I received this
17 document.

18 Q. Is it your testimony that at
19 no point during the Genomatica
20 litigation you were made aware that
21 there were concerns from individuals at
22 MCC on how the litigation was being
23 handled?

24 A. I knew that the folks at MCC
25 hoped for a quick settlement, and that

1 J. BERMAN

2 offer from Genomatica, and that didn't
3 materialize. I think we were all
4 surprised that a litigant in
5 Genomatica's position fought somewhat
6 desperately, but ultimately fecklessly
7 and ineffectively, when in the face of
8 a contract that was so clear in
9 misconduct and wrongdoing, I should
10 say, on Genomatica's part of the
11 evidence, I didn't have specific
12 knowledge that Takimoto-san was
13 skeptical of me or Jennifer personally,
14 and our strategy or legal work.

15 Q. I'm going to show you exhibit
16 -- I'm going to populate and share with
17 the rest of the group Exhibit 3, just
18 take a moment, Mr. Berman. So while we
19 wait and do that for the rest of the
20 group, I ask that you take a look at
21 it, since you have a hardcopy.

22 A. Okay.

23 Q. I just want to note for the
24 record that Exhibit 3 is Bates stamped
25 Def 876 to Def 877.

1 J. BERMAN

2 (Exhibit 3, marked for
3 identification, Bates stamped Def
4 000876.)

5 Q. Mr. Berman, let us know when
6 you've completed your review of
7 Exhibit 3.

8 A. I've completed it.

9 Q. Were you aware that Minami
10 Tomoji had expressed discomfort
11 regarding the handling of the
12 Genomatica litigation prior to your
13 review of this Exhibit 3?

14 MS. DONEHOWER: Mr. Anhang,
15 may we answer that question?

16 MR. ANHANG: Yes, as long as
17 the answer --

18 MR. BERMAN: I'm going to
19 object to the form of the question
20 as well.

21 MR. ANHANG: I'm sorry, I
22 didn't mean to speak over you,
23 Matthew.

24 MR. BERMAN: Vice-versa, I
25 apologize.

1 J. BERMAN

2 MR. ANHANG: No problem at
3 all. I don't believe there's a
4 problem with the witness answering
5 the question, insofar as the
6 question doesn't require the
7 witness to reveal the substance of
8 any request for legal advice or the
9 substance of the provision of any
10 legal advice by the people involved
11 here. So to that extent, I don't
12 see a problem with the witness
13 answering the question.

14 A. To the best of my
15 recollection, Ms. Colwin, I wasn't
16 aware of that until reading the
17 document just now. And I'm not sure
18 how to understand -- I'm not sure how I
19 would characterize Tomoji's email. I
20 leave that to others.

21 Q. I just want to make sure the
22 record is clear, that prior to your
23 review of these emails, you were not
24 made aware of the concerns that Tomoji
25 had raised about the handling of the

1 J. BERMAN

2 Genomatica litigation, correct?

3 MR. BERMAN: Object to form.

4 A. Not specifically, no. Again,
5 I knew that the client, MCC, and all of
6 the stakeholders really wanted this
7 thing to be wrapped up, and really
8 wanted it to be wrapped up
9 successfully. And sometimes that takes
10 time in U.S. court, and this document
11 has also refreshed my recollection
12 that, I had forgotten it, but either
13 the district judge or the original
14 magistrate had retired, which, and we
15 had -- we were moving along at a good
16 clip, and were scheduled to go for a
17 mediation, and then one of the judges
18 retired. And, you know, I remember
19 feeling like this is quite frustrating,
20 given that the client would like to see
21 a response in a, you know, as short a
22 time frame, a resolution in as short a
23 time frame as possible.

24 But I wasn't aware of
25 anything else. I just, I think I

1 J. BERMAN

2 shared in the frustration of the -- of
3 my client.

4 Q. So Mr. Berman, if I am to
5 interpret your testimony correctly, and
6 please state so if I'm not, is it your
7 testimony that there was a disconnect
8 between the expectations MCC had with
9 respect to the Genomatica litigation
10 and the proffers of the litigation, and
11 what you and Ms. Fischman were able to
12 deliver?

13 MR. BERMAN: Object to form.

14 A. I wouldn't go that far,
15 Ms. Colwin. I think we hit some choppy
16 waters, and we were all surprised that
17 a litigant under so explicit a
18 contractual obligation was taking
19 frivolous and unsupportable positions
20 rather than coming to the settlement
21 table immediately and in good faith,
22 more immediately, which they ultimately
23 did. And I was aware that this wasn't
24 great. That my client, and I'm now
25 thinking of the folks in Japan had

1 J. BERMAN

2 wanted, on an ongoing basis, for this
3 matter to be resolved as quickly as
4 possible. And contemporaneously, my
5 thinking was it's difficult to imagine,
6 from thousands of miles away, that
7 sometimes the litigation process in the
8 United States courts, even in federal
9 courts, can feel a bit glacial, and
10 then we were hit with this retirement.

11 And so I definitely
12 understood, and this is often the case
13 with businesspersons, but I definitely
14 understood that this wasn't great news
15 for the client. I wouldn't think of it
16 as a disconnect, though.

17 Q. But Mr. Berman, you're a
18 seasoned litigator, and you have --
19 obviously a very sophisticated one.
20 You have a lot of business
21 relationships, and you have represented
22 clients in matters for a number of
23 years. If there is any discomfort to
24 characterize what was happening at
25 Genomatica as hitting choppy waters,

1 J. BERMAN

2 you agree, do you not, that the client
3 at issue here, MCC, had full discretion
4 to change the manner in which the
5 litigation was being handled, do you
6 not?

7 A. Sure, although I would say
8 that most of my clients, or longtime
9 clients, are many, and we would discuss
10 this, rather than me being ordered to
11 kind of change tack. At any rate, the
12 strategy was correct. It just took
13 more time to play out than we all
14 hoped. We had to sort of tenderize
15 Genomatica a little bit with litigation
16 activity, and ultimately we had this
17 delay that was occasioned by nobody,
18 other than the happenstance of a judge
19 retiring. And this is, I guess, the
20 November time frame that must have
21 leapt to my mind earlier.

22 Q. I was about to start in that
23 time frame. Does this part of your
24 testimony refresh your recollection as
25 to the time frame in which Mr. Oliva,

1 J. BERMAN

2 as you had testified earlier, became
3 move involved in the Genomatica
4 litigation?

5 A. I think so. Unless -- it
6 must be, because this is around the
7 time of the ENE. And then that is when
8 Nick -- it would have been, I guess, in
9 the lead-up to this time frame, or
10 around this time frame that Nick got
11 involved, yes, on a day-to-day basis.

12 Q. Okay. Let me just share with
13 the rest, and I would ask you,
14 Mr. Berman, to take a look at Exhibit
15 4. The document is loading on our end,
16 just a moment. But Mr. Berman, if you
17 could take a look at Exhibit 5 -- four,
18 rather, it's Bates stamped Def 1422 and
19 Def 1423.

20 A. I just read it.

21 Q. Okay. I want to wait for the
22 rest of the group to have it, so just
23 wait one second.

24 (Exhibit 4, marked for
25 identification, Bates stamped Def

1 J. BERMAN

2 1422 and Def 1423.)

3 Q. Mr. Berman, when was the
4 first time you've seen this document,
5 which is Exhibit 4?

6 A. When your envelope arrived at
7 my home.

8 Q. Okay. Had you ever discussed
9 this information -- well, I should say
10 what's set forth in Exhibit 4, with
11 Mr. Oliva or Ms. Fischman?

12 A. To the best of my
13 recollection, no. I was just notified
14 that Nick would be participating in the
15 early neutral mediation, and that's
16 what happened.

17 Q. And that brings us to, that
18 would have been the November 2016
19 settlement conference, correct?

20 A. I guess that's right.

21 Q. And who was it that informed
22 you that Mr. Oliva would have a more
23 significant role during that process?

24 A. It wasn't that he would have
25 a more significant role, it was that he

1 J. BERMAN

2 would be the client designee with
3 settlement authority who would be
4 accompanying me to California. I
5 believe it may have been Ms. Fischman
6 in the first instance who said MCC has
7 designated Mr. Oliva to go with you to
8 the ENE, to the mediation or settlement
9 conference, as you call it.

10 You recall, Ms. Colwin, with
11 most of these court-ordered mediation
12 programs, each party is required to
13 bring a client representative to the
14 settlement party, and Nick Oliva was
15 that person.

16 Q. Okay. So you derived the
17 understanding that Mr. Oliva would be
18 the designee for the November 26th
19 settlement conference through your
20 conversation with Ms. Fischman,
21 correct?

22 A. And of course, subsequently
23 with Mr. Oliva.

24 Q. But your initial
25 understanding was derived from your

1 J. BERMAN

2 conversation with Ms. Fischman,
3 correct?

4 A. Correct.

5 Q. Did you have more than one
6 conversation with Ms. Fischman about
7 Mr. Oliva's role in the November 2016
8 mediation?

9 A. I just don't remember.

10 Q. Is there anything that exists
11 that would refresh your recollection as
12 you sit here today?

13 A. Like, I don't know how to
14 answer that question. You would have
15 to show it to me and ask me if it
16 reflects -- I don't know if there's
17 anything in the world that might
18 refresh my recollection. I guess if I
19 saw time records or emails, sure. That
20 could help. I just don't know if there
21 was one conversation or more than one.

22 Q. Put up the next email, and I
23 would ask, Mr. Berman, if you could
24 take a look at Exhibit 5, and I'm just
25 going to state for the record.

1 J. BERMAN

2 A. Okay, let me just read it,
3 okay?

4 Q. Sure, and while we're doing
5 that, I just want to note for the
6 record that Exhibit 5 is Def 872 and
7 873. There are two parts of this
8 exhibit, Mr. Berman. I would also ask
9 you to take a look at Exhibit 6. And
10 so both Exhibit 5 will encompass -- now
11 we're populating Exhibit 6.

12 (Exhibit 5, marked for
13 identification, Bates stamped Def
14 872 and 873.)

15 A. Exhibit 6 is long. Do you
16 want me to read the whole thing?

17 Q. If you could, Mr. Berman.

18 A. Okay, just a second.

19 Q. I'd just like to note for the
20 record that Exhibit 6 is Bates stamped
21 Def 1842 to Def 1847.

22 (Exhibit 6, marked for
23 identification, Bates stamped Def
24 1842 to Def 1847.)

25 A. Okay, I believe I read them

1 J. BERMAN

2 both.

3 Q. Mr. Berman, I'm going to ask
4 you to take a look at Exhibit 5, and
5 the Bates stamp number 873 would be the
6 second page of Exhibit 5.

7 A. I see it.

8 Q. And do you see the copy of
9 the email on the bottom half of that
10 page?

11 A. I do.

12 Q. That is your email at your
13 former firm, is it not --

14 A. Yeah --

15 Q. Joshua.Berman -- .com,
16 correct?

17 A. -- yeah, I mean, it appears
18 that my testimony earlier was not
19 correct. I was copied on this email
20 from Minami-san, and I -- that must
21 have been how I learned that Mr. Oliva
22 was going to be the designee for the
23 early neutral evaluation. So I just
24 correct myself and remind everybody
25 that it's been some time, and I'm doing

1 J. BERMAN

2 my best.

3 Q. Sure, no, absolutely, and we
4 appreciate it, Mr. Berman, thank you.
5 November 16, 2016, you attended the
6 mediation with Mr. Oliva; is that
7 right?

8 A. Correct.

9 Q. Did you receive any
10 instructions from Mr. Oliva at the
11 time, at that very moment in time,
12 about the tone and approach the two of
13 you were to take during the mediation
14 on November 16, 2016?

15 A. That's a hard question, only
16 in the sense that Nick and I were
17 collaborating with, obviously, Nick
18 being the client, and giving the
19 guidance, but Nick and I were
20 collaborating on a sort of
21 moment-to-moment basis. So I received
22 lots of guidance, and I hoped that Nick
23 believed he received guidance or
24 appropriate and thoughtful reactions in
25 return.

1 J. BERMAN

2 So like, you have to imagine,
3 we were in the magistrate chambers.
4 Both sides were sitting there. If
5 memory serves, I made a presentation
6 first. Mr. Stiegler, my opposing
7 counsel, then made a presentation. And
8 then the judge split us up and was kind
9 of going back and forth between rooms
10 and conducting negotiations. And so
11 Nick and I were very much working, you
12 know, arm in arm to achieve a
13 settlement, if that was possible. So
14 at every moment we were in close
15 communication.

16 Q. Did you receive instructions
17 from Mr. Oliva about the tone and the
18 presentation at the mediation at
19 November '16?

20 A. I did.

21 Q. What were those instructions?

22 A. Again, to take special
23 caution not to respond to anything put
24 forth or stated by Mr. Stiegler that
25 might be provocative, and to maintain a

1 J. BERMAN

2 courtesy disposition and equanimity at
3 all times. You know, in keeping with
4 the cultural norms and values of our
5 Japanese client.

6 Q. What was the outcome of the
7 settlement conference?

8 A. I don't remember if we
9 reached a settlement there, or if it
10 was somewhat thereafter, but we
11 achieved a successful settlement of the
12 matter. I don't remember the exact
13 number, but my broadly -- did we have
14 to go to a second one? I remember
15 Tomoji Utsunomiya-san being in the U.S.
16 Look, I don't know when the outcome
17 came about exactly. I'm sure the
18 documents will refresh my recollection,
19 but we ultimately were able to achieve
20 a successful outcome.

21 Q. So let me just make sure that
22 the record is clear. Is it your best
23 recollection that that successful
24 outcome did not come on that day of
25 November 16, 2016?

1 J. BERMAN

2 A. I don't know why I have that
3 idea in my head, but it could just be,
4 it could be incorrect -- I just, I'm
5 frustrated with my own lack of
6 recollection, but I'm just not sure.

7 Q. Mr. Berman, I think the next
8 exhibit will probably help you, so I
9 ask you to take a look at Exhibit 7
10 while we populate it for the rest of
11 the group. And Exhibit 7 is Bates
12 stamped Def 1907 to 1908.

13 (Exhibit 7, marked for
14 identification, Bates stamped Def
15 1907 to 1908.)

16 A. Okay, I guess we didn't
17 resolve it on the day of the ENE.

18 Q. I thought this might be
19 fruitful for your recollection.

20 A. Yep. Yeah, you can see when
21 I forwarded this to Jen for review. I
22 can't see what I wrote, because it was
23 blocked out, but Stiegler was a very
24 aggressive and sometimes discourteous
25 opponent, and I wanted to be sure that

1 J. BERMAN

2 my responses sort of held to the
3 guidance, so you can see that I asked
4 Jennifer, who then, I guess, forwarded
5 it to Nick, and I wanted to make sure
6 that the language I was using with
7 Stiegler was not too strong.

8 Q. Prior to today, had you seen
9 -- so let me just make sure that the
10 record is clear, I'm going to take a
11 look, 1908, Mr. Stiegler is
12 Genomatica's counsel, and that is
13 redacted, preserving the
14 attorney/client privilege, and the Def
15 1908 was Mr. Oliva's response to
16 Ms. Fischman pertaining to that
17 particular message you proposed to send
18 to Stiegler. Had you seen Mr. Oliva's
19 response prior to today?

20 A. I don't see Mr. Oliva's
21 response in the exhibit, I only see
22 Ms. Fischman's email to Jen saying, I
23 don't want to send this out without
24 your green light, if you will.

25 Q. Did you ever receive any

1 J. BERMAN

2 feedback from Ms. Fischman about
3 Mr. Oliva's response?

4 A. You're speaking specifically
5 with respect to that email?

6 Q. Yes.

7 A. I don't recall. And I just
8 want to ask you, am I missing something
9 on the page here?

10 Q. No.

11 A. Okay, I'm not seeing Nick's
12 answer to Jennifer.

13 Q. We're going to populate the
14 screen again.

15 A. Should I be reading
16 Exhibit 8, or no?

17 Q. No, take a look -- yes, we're
18 just calling it up. So it would be
19 Exhibit 9, and it is Def 2301 and 2302.

20 A. I see it, I read it.

21 Q. And do you see the -- oh, you
22 read it, okay.

23 (Exhibit 8, marked for
24 identification, Bates stamped Def
25 2301 and 2302.)

1 J. BERMAN

2 Q. Had you discussed with
3 Ms. Fischman any of the feedback that
4 she had received from Mr. Oliva about
5 the manner in which the litigation
6 should -- Genomatica should be handled?
7 And specifically Def 2301, where
8 Mr. Oliva states, We should stay the
9 course with integrity?

10 A. I don't recall about the
11 attribution, or if Ms. Fischman
12 attributed this guidance to Nick
13 specifically, but she did communicate
14 that we would have to adapt our
15 litigation style to the courtesy norms,
16 if will you, of the client, in spite of
17 the fact that opposing counsel is
18 writing in a way that is more
19 consistent with a bit antagonistic,
20 U.S. litigation counsel. But I don't
21 know that she said this is guidance
22 specifically from Nick.

23 Q. Let's take a look at, I'm
24 going to ask you to take a look at a
25 series of emails. Let's begin with

1 J. BERMAN

2 Exhibit 9 in your package that is Bates
3 stamped Def 882 and Def 883.

4 A. Okay, just a second.

5 Q. I want to note for the
6 record, it is redacted heavily to
7 ensure that attorney/client privilege
8 is maintained.

9 (Exhibit 9, marked for
10 identification, Bates stamped Def
11 882 and Def 883.)

12 A. I see it.

13 Q. All right. I'm going to ask
14 you to identify what this email is, but
15 just hold on one moment, because we are
16 about to populate it for the group.
17 Mr. Berman, I'm showing you what's
18 Exhibit 9 for identification. What is
19 it?

20 A. So if you scroll down on your
21 screen, I found the answer on text.

22 Q. Sure.

23 A. Even further, all the way tow
24 the bottom. So this, I somewhat recall
25 this. At or around this time period,

1 J. BERMAN

2 Stiegler had started to make settlement
3 offers that were not just completely
4 silly. Like, they had started at
5 \$135,000, and I think the contract
6 amount that was owed was 2.5 million.
7 So what I was forwarding here to
8 Ms. Fischman, oh, and Mr. Oliva,
9 because I guess this would have been
10 after the ENE.

11 Q. Yes.

12 A. So I had spoken to both of
13 them. My recommendation for how we
14 might respond to Stiegler's or
15 Genomatica's settlement offer, and some
16 editorial, as you can see, about what I
17 thought our litigation activity was
18 accomplishing in terms of sort of
19 shaking up Genomatica and its counsel.

20 Yeah, right, and I recall
21 that I -- I recall thinking, why don't
22 we offer -- maybe we just give them a
23 little bit of a time runway to pay the
24 2.5 million that was owed, and show
25 kind of good faith in that way, or

1 J. BERMAN

2 compromise a bit in that way, or ask
3 for a smaller amount of money in
4 settlement of the matter full and
5 final, but payable immediately. Those
6 were my thoughts on how we might
7 respond to Tony Stiegler.

8 Q. Above, Mr. Berman, I'm going
9 to ask you to take a look at the top
10 half of 883. Ms. Fischman makes a
11 reference to having spoken to you about
12 this communication, and with respect
13 specifically to the offering that was
14 being proposed.

15 Do you recall having a
16 conversation with her at this time
17 period?

18 A. I mean, we spoke, as lawyers
19 and counsel do, with some regularity.
20 I can't say that I remember this
21 specific conversation that's referenced
22 in the email dated December 29, 2016.
23 Yeah, it would have been obviously,
24 during that week between Christmas and
25 New Year's. I don't remember the

1 J. BERMAN

2 specific conversation. I just don't
3 remember it.

4 Q. Okay. Take a look at 882,
5 Mr. Oliva's response to Ms. Fischman,
6 and this is her proposal to Mr. Oliva,
7 the one that's reflected in the top
8 half of 883.

9 A. I see it. She's saying, I
10 want to counter with 2.5 up front, and
11 a royalty license, and Nick said, Isn't
12 that just asking for a win -- I see the
13 colloquy.

14 Q. Was that discussed with you?

15 A. I don't recall.

16 Q. Did you have a conversation
17 with Mr. Oliva pertaining to his
18 conclusion as to what Ms. Fischman had
19 proposed, which is reflected in the top
20 half of 883?

21 A. For some reason, I think Nick
22 and I went back out to San Diego. I
23 don't know why I can't shake that, but
24 I know that -- I don't recall a
25 specific conversation about this email

1 J. BERMAN

2 chain. Nick and I certainly discussed
3 settlement subsequent to this date, and
4 we -- our offer was not 2.5 plus
5 royalties. It was more of a compromise
6 position.

7 Q. Okay. I ask you to take a
8 look at Exhibit 10, which is going to
9 be populated to the rest of the group,
10 but if you could take a look at the
11 hardcopy you have, and just let us know
12 when you have reviewed it, and I would
13 like the record to reflect that
14 Exhibit 10 is Def 884 to Def 886.

15 THE VIDEOGRAPHER: Excuse me,
16 Counselor.

17 MS. COLWIN: Yes?

18 THE VIDEOGRAPHER: Sorry to
19 interrupt, but I need to change
20 this media unit.

21 MS. COLWIN: Let's go off the
22 record, and we can do it.

23 THE VIDEOGRAPHER: It will
24 take me one minute. Stand by.

25 THE WITNESS: Can I ask for

1 J. BERMAN

2 five minutes?

3 THE VIDEOGRAPHER: Let me
4 take us off the record.

5 MS. COLWIN: Go ahead,
6 Mr. Berman.

7 THE VIDEOGRAPHER: This is
8 media unit one, we are now off the
9 record at 11:58 a.m.

10 (Recess.)

11 (Ms. Gueron has left the
12 deposition.)

13 THE VIDEOGRAPHER: This is
14 the beginning of media unit number
15 two. We are now on the record at
16 12:09 p.m., back from break.

17 Q. Great. Mr. Berman, you've
18 had an opportunity to take a look at
19 Exhibit 10, have you not?

20 A. Yes.

21 Q. That was Bates stamped 884 to
22 886, correct?

23 (Exhibit 10, marked for
24 identification, Bates stamped Def
25 884 to 886.)

1 J. BERMAN

2 A. Correct, correct.

3 Q. So let's start with the back
4 and go forward. It will be the last
5 page right there.

6 A. Yes, this is the same email
7 we looked at in the previous exhibit,
8 and you can see there's a forward.

9 Q. Right. When did you become
10 aware of these communications?

11 A. Well, I obviously was aware
12 of the communication when I wrote it.
13 The subsequent email from Tomoji to
14 Jennifer copying Utsunomiya-san,
15 Takimoto-san and numerous others, I
16 don't know if I was aware of that
17 specific email until this process.

18 Q. Okay. Let's take a look at
19 the very first -- so I'm looking at
20 886.

21 A. Okay, just a moment, please.
22 I'm there.

23 Q. All right. This is the
24 counter that you were communicating
25 with in the prior exhibit, which is

1 J. BERMAN

2 Exhibit 9, the 2.5.

3 A. Just to be clear, I was
4 suggesting options for how we might
5 counter. I wasn't --

6 Q. Sure.

7 A. Yeah.

8 Q. So these -- so Ms. Fischman
9 is communicating with Minami Tomoji
10 about the settlement -- the settlement
11 options, correct?

12 A. It appears that way from the
13 document.

14 Q. And that communication is
15 dated 12/30/2016, correct?

16 A. Oh, I see. I'm sorry. This
17 is Jennifer forwarding my email to
18 Minami-san. I now see what is going on
19 here.

20 Yes, on December 30th of
21 2016, it appears from looking at the
22 document that Ms. Fischman forwarded my
23 suggestion to Tomoji.

24 Q. Exactly. Now, there was a
25 response, so I'm going to ask you to

1 J. BERMAN

2 take a look at 885. That's for --

3 A. I see it.

4 Q. And that is dated January 3,
5 2017, there is a redaction reflecting
6 attorney/client privilege. But above
7 that were the instructions given from
8 MCC, correct?

9 A. I see that.

10 Q. Was this communicated to you
11 by Ms. Fischman, to the best of your
12 recollection?

13 A. I'm sorry, but I just don't
14 know if this particular step in the
15 process was communicated to me or not.

16 Q. Okay. Then there is a
17 further communication.

18 A. I see that.

19 Q. That is dated now January 5,
20 2017; is that right?

21 A. Right.

22 Q. And that communication is
23 from Ms. Fischman back to MCC; is that
24 right?

25 A. I do see that, yes.

1 J. BERMAN

2 Q. And just take a moment. It
3 says, Dear Tomoji, thank you for your
4 email. We are still discussing the
5 offer among Josh, Nick and myself, and
6 we're not ready to respond with a
7 counterproposal. We will send you our
8 recommendation as soon as possible.

9 So do you understand that as
10 of January 5, 2017, there had not been
11 a specific understanding as to what the
12 offer should be back to Genomatica?

13 A. Do I understand -- gauging
14 from the email, it appears that
15 Ms. Fischman was saying, Hold on,
16 before we definitively say 2.5 split
17 into two payments over the period of
18 six months, let me and Nick and Josh
19 consider this a little further and kind
20 of update, or respond -- recommend a
21 definitive course.

22 Q. Mr. Berman, you're not aware
23 of any written communication from MCC
24 with a specific authorization directing
25 you and Ms. Fischman to take a specific

1 J. BERMAN

2 offer to the Genomatica matter; is that
3 right?

4 A. I believe that's true, and
5 you can see that in the email of
6 January 3rd at 11:22 p.m., where Tomoji
7 did make the statement, Our
8 counterproposal should be 2.5 payable
9 in two installments over six months, as
10 suggested by Josh, I don't believe I'm
11 copied on that. So I can't tell you
12 from memory -- to the best of my
13 recollection, I didn't get a separate
14 email from Tomoji or from
15 Utsunomiya-san or anyone else saying,
16 Do X.

17 Q. I'm going to ask you to take
18 a look at the next exhibit.

19 A. The next exhibit, or the
20 first page of the exhibit that we
21 have --

22 Q. No, the next exhibit.

23 A. Okay.

24 Q. Which is the --

25 A. The next exhibit is 11, but

1 J. BERMAN

2 it's just the stuff that I have to
3 hand. Do you want me to go to 12?

4 (Exhibit 11, marked for
5 identification, Bates stamped Def
6 885.)

7 Q. We're going to populate it.

8 A. In the meantime, what are you
9 asking me to look at?

10 Q. It will be 12 in your
11 package, Bates Def 2322.

12 A. Okay, I'm there, thank you.

13 (Exhibit 12, marked for
14 identification, Bates stamped Def
15 2322.)

16 A. I've read it.

17 Q. Okay. This is a
18 communication to Ms. Fischman
19 pertaining to the settlement, correct?

20 A. That's correct. Well, among
21 other things.

22 Q. Is it your understanding as
23 of January 5, 2017, at the time of this
24 email at 6:29 p.m., there was no
25 specific written communication from MCC

1 J. BERMAN

2 with specific instructions as to what
3 offer should be made in the Genomatica
4 matter, correct?

5 A. Yeah, it must have been,
6 because I'm saying let's also decide
7 firmly how we want to respond to the
8 settlement email.

9 Q. And in this specific email,
10 it says, We don't have sufficiently
11 concrete answers from Japan yet. What
12 did you mean by that?

13 A. What it sounds like, which
14 is, you know, whether we want to say
15 2.5 over six months or something
16 different, I think -- if memory serves,
17 I didn't want to let Stiegler's
18 proposal just kind of sit without a
19 response. That seemed
20 counterproductive, and maybe
21 discourteous. And so you can see, that
22 I suggest, you know, to the extent that
23 we don't have a kind of a specific
24 marching order or a precise strategy
25 down to the number, maybe I just send

1 J. BERMAN

2 him a note saying, Thank you for kind
3 of reopening conversations, and we'll
4 be back to you shortly.

5 Q. I just want to make sure the
6 record is correct and reflects your
7 testimony accurately, Mr. Berman. Is
8 it your testimony that as of the
9 evening of January 5, 2017, you were
10 not aware of any specific instructions
11 from MCC as to the specific amount to
12 offer in the Genomatica litigation,
13 correct?

14 A. To the best of my
15 recollection, that's correct.

16 Q. And is it your testimony that
17 -- withdrawn.

18 Did you have any
19 conversations with anyone from MCC
20 between January 5, 2017, at 6:29 p.m.
21 and the time of the offer that was made
22 on January 6, 2017, in the Genomatica
23 litigation?

24 A. I don't believe so. That
25 would have entailed a call to Japan. I

1 J. BERMAN

2 don't believe I had such a
3 communication, though.

4 Q. Okay. And your
5 understanding, just to make sure that
6 we have a full record of your
7 recollection, your understanding of the
8 offer you made on January 6, 2017, was
9 based upon communications with
10 Ms. Fischman; is that right?

11 A. Yeah, just for my own -- oh,
12 I see, is it okay that I look at 13?

13 Q. Yes, we're going to populate
14 that for the rest of the group. I ask
15 you to take a look at Exhibit 13, and
16 I'll ask you what that document is, but
17 in the interim, while we have that put
18 up on the screen for the rest of the
19 group, it is Bates stamped Def 2315 to
20 2316. Let me know when you've had a
21 moment to take a look at it.

22 (Exhibit 13, marked for
23 identification, Bates stamped Def
24 2315 to 2316.)

25 A. I read it.

1 J. BERMAN

2 Q. Okay. Could you identify for
3 the record what Exhibit 13 is?

4 A. Yes, it's a response pursuant
5 to Federal Rule of Evidence 408, which
6 is, pertains to the settlement
7 privilege, to Tony Stiegler's offer on
8 behalf of Genomatica, which was dated
9 December 28, 2016. And this is our
10 counteroffer. Jen offered 1.5 in four
11 equal installments, and I am here
12 countering with 2.3 million to be paid
13 within 30 days. So this is my
14 counteroffer.

15 Q. Mr. Berman, do you believe at
16 the time you made that offer on
17 January 6th, that you were authorized
18 to make that communication known to
19 opposing counsel in the Genomatica
20 litigation, based upon your
21 conversations with Ms. Fischman and
22 Ms. Fischman alone; is that right?

23 A. To the best of my
24 recollection, yes.

25 Q. And is it your recollection

1 J. BERMAN

2 -- withdrawn.

3 Is it your recollection that
4 the directive given to you by
5 Ms. Fischman to make this offer was
6 relayed to you by telephone or some
7 other method?

8 A. Well, you can see here that I
9 write to Mr. Stiegler, I have spoken to
10 my client, and that is consistent with
11 my best recollection, which could be
12 faulty, but it's consistent with my
13 best recollection that Ms. Fischman and
14 I spoke, and this was the result of
15 that communication. What I don't
16 remember is the specific words uttered
17 in my call with Jen. But obviously, it
18 led me to write this.

19 Q. Okay. I ask you to take a
20 look at Exhibit 14, and while we
21 populate that for the rest of the
22 group, it is Bates stamped 878 and 879.

23 (Exhibit 14, marked for
24 identification, Bates stamped Def
25 878 and 879.)

1 J. BERMAN

2 A. Okay, give me a second to
3 read it. It's slowed by all the
4 redactions.

5 Q. Sure.

6 A. Okay, I see it.

7 Q. Okay, Mr. Berman, I will give
8 you, then, a moment to take a look at
9 this communication, and I'm going to
10 direct your attention to Def 878. You
11 understand that this communication from
12 MCC to Mr. Oliva, and with a copy to
13 Ken Fujiwara, do you know who Ken
14 Fujiwara is?

15 A. No idea.

16 Q. That the offer that you had
17 made on January 6th was not authorized
18 by MCC, correct?

19 A. I see that Tomoji is saying
20 he was surprised to hear that the offer
21 is made. So I have no independent
22 knowledge, but merely looking at the
23 document, I understand why you're
24 framing it that way.

25 Q. And you understand that MCC

1 J. BERMAN

2 is setting forth their concerns about
3 an offer made that they had not been
4 made aware of prior to the offer being
5 made, correct?

6 MR. BERMAN: Objection to
7 form.

8 A. I see the sentence that
9 reads, Some MCC members are a little
10 upset by the fact that Josh made it
11 without advising us of the offer. Bit
12 of a funny sentence, because I never
13 would have called anyone in Japan
14 without either Mr. Oliva or
15 Ms. Fischman on the phone. That would
16 have been, I believe, tactless and out
17 of place for me to do that.

18 Q. So I just want to make sure
19 that the record is clear. You already
20 stated under oath in your testimony
21 that you had no communications with
22 anyone from MCC between January 5 and
23 the time you made the offer on January
24 6; is that accurate?

25 A. To the best of my

1 J. BERMAN

2 recollection, that is correct.

3 Q. If you take a look at Exhibit
4 15, which is Bates stamped 844 and 845.

5 (Exhibit 15, marked for
6 identification, Bates stamped Def
7 844 and 845.)

8 A. These are the communications
9 between Mr. Oliva and Ms. Fischman?

10 Q. Yes.

11 A. Okay.

12 Q. Prior to this proceeding --

13 A. Hold on, hold on, let me just
14 read it.

15 Q. I'm sorry, Mr. Berman, I
16 thought you had completed your review.

17 A. Okay, I see it.

18 Q. Had you seen these email
19 exchanges prior to today?

20 A. Not to the best of my
21 recollection, no.

22 Q. And I'm going to ask you to
23 take a look at 845, when Mr. Oliva
24 states to Ms. Fischman that it's his
25 understanding that you had delivered

1 J. BERMAN

2 information to Genomatica pertaining to
3 the \$2.3 million offer prior to
4 confirmation from MCC, do you see that?

5 A. I do see it.

6 Q. And in Ms. Fischman's
7 response on 844, she states that it was
8 done by her authority. Did you ever
9 have a conversation with Ms. Fischman
10 about this exchange between herself and
11 Mr. Oliva?

12 A. To the best of my
13 recollection, no.

14 Q. I'm going to ask, if we take
15 a moment, I need a five-minute break.
16 I think I'm done, but let me take a
17 five-minute break to confirm.

18 A. Are there others besides you
19 who intend to ask questions?

20 Q. I would ask counsel present
21 if any questions are going to be asked
22 of Mr. Berman.

23 MR. BERMAN: This is Matthew
24 Berman speaking on behalf of
25 plaintiff, and the answer is likely

1 J. BERMAN

2 yes, there may be some
3 cross-examination questions limited
4 to what you've already been asked
5 today.

6 THE WITNESS: Okay, great.

7 THE VIDEOGRAPHER: Let me
8 take us off the record.

9 MR. BERMAN: Before you take
10 us off the record, I would also
11 like to note that we are reserving
12 the right to call this witness as a
13 deponent at some future point in
14 time.

15 THE VIDEOGRAPHER: Stand by
16 to go off the record. We are now
17 off the record, the time is
18 12:30 p.m.

19 (Recess.)

20 THE VIDEOGRAPHER: We are now
21 on the record, the time is
22 12:44 p.m., back from break.

23 Q. Mr. Berman, after January 6,
24 2017, do you recall having a
25 conversation with Mr. Oliva pertaining

1 J. BERMAN

2 to the \$3.5 million offer you had made
3 on Genomatica on January 6, 2017?

4 A. I don't recall a specific
5 conversation. There certainly could
6 have been one, but sitting here today,
7 can't recall if we had such a
8 conversation or not.

9 Q. In any conversation after
10 January -- do you recall any
11 conversations pertaining to the offer
12 that you had made on January 6, 2017,
13 pertaining to the Genomatica matter?

14 A. I don't remember if Mr. Oliva
15 and I specifically addressed the
16 \$2.3 million counteroffer. I do,
17 obviously, recall working closely with
18 Mr. Oliva to achieve the settlement
19 that we achieved.

20 Q. Does it make logical sense to
21 you that you would have a conversation
22 with Mr. Oliva about the \$2.3 million
23 offer made on January 6, 2017?

24 A. It's very possible. Nick was
25 incredibly scrupulous, just sort of

1 J. BERMAN

2 generally, I guess, about observing the
3 -- I don't mean the formalities, to
4 diminish them, but I mean about
5 observing protocols, and obviously -- I
6 mean, it's certainly possible, and Nick
7 was really clear about other
8 relationship matters and making sure we
9 always maintained composure no matter
10 what the other side did, and that sort
11 of thing, so it wouldn't surprise me at
12 all. I just can't recall if we had a
13 specific conversation on this narrow
14 topic or not.

15 Q. And just following the logic
16 that you just expressed, in any
17 conversation that you believe you may
18 have had with Mr. Oliva pertaining to
19 the \$2.3 million offer made on
20 January 6th, you would have identified
21 that offer was made pursuant to
22 Ms. Fischman's authorization, correct?

23 A. If anyone would have asked
24 me, I would have told the truth,
25 including Nick.

1 J. BERMAN

2 MR. BERMAN: Object to the
3 form of the question. It takes me
4 a moment to unmute. I don't mean
5 to speak over the witness.

6 A. I'm speculating a little bit,
7 but if you were to ask me what
8 happened, I would -- if anybody, I
9 would have told the truth, which is
10 what we discussed today. So if that
11 conversation did occur, and it's
12 possible that other people's
13 recollection is sharper than mine on
14 this particular point, because I
15 haven't been living this in the context
16 of litigation the way you all have, I'd
17 have no reason to doubt that.

18 Q. Okay.

19 MS. COLWIN: I have nothing
20 further at the moment. I know that
21 Matt Berman may have some questions
22 for you, so I reserve my time to
23 come back and ask you some further
24 questions, if necessary. But I
25 thank you, Mr. Berman.

1 J. BERMAN

2 THE WITNESS: Sure.

3 MS. COLWIN: Matt.

4 MR. BERMAN: Sure, I just
5 have some questions to ask you
6 about your interaction with
7 Ms. Fischman.

8 MS. DONEHOWER: Mr. Berman,
9 if I may, before you start, we've
10 made Mr. Berman available today as
11 a nonparty witness. I know you
12 reserved your right to call him
13 back, but we would ask, given that
14 he has made himself available today
15 and that you have the opportunity
16 to ask him questions, that you ask
17 him as much as possible, so that he
18 won't have to reappear.

19 MR. BERMAN: I understand
20 that concern, and we're going to do
21 our best not to recall the witness
22 unless it's absolutely necessary,
23 but we do need to reserve the right
24 to do so if it should become
25 necessary.

1 J. BERMAN

2 EXAMINATION BY

3 MR. BERMAN:

4 Q. When did you begin working
5 with Ms. Fischman?

6 A. As I believe I testified
7 earlier, and I may be off by a month or
8 two, in or around the area of 2016.

9 Q. Can you repeat the month,
10 please, if you know?

11 A. I don't have a specific month
12 without a document.

13 Q. Okay. What role was
14 Ms. Fischman in when you first began
15 interacting with her?

16 A. I can't remember if
17 Ms. Fischman was still acting general
18 counsel, or if Nick had already arrived
19 at MCHA. I can't remember if that
20 happened before I was retained or
21 shortly after I was retained.

22 Q. Okay. Did you ever interact
23 with Ms. Fischman while she was in any
24 other title at the company?

25 A. It's possible, like I said.

1 J. BERMAN

2 It's possible -- well, the facts are
3 what they are. My recollection is that
4 I'm not, I don't recall when I was
5 first retained, whether Ms. Fischman
6 was still acting GC or whether she had
7 taken on the new title, and Mr. Oliva
8 had assumed the general counsel role.
9 It's possible it occurred before she
10 retained me or shortly after she
11 retained me. I'm afraid I just don't
12 remember.

13 Q. Did you ever interact in a
14 role with her prior to her becoming
15 general counsel?

16 A. No, not professionally. I
17 don't know when she got that role, but
18 as I testified earlier, we would -- we
19 often sat next to each other in Hebrew
20 school, and would chat socially.

21 Q. Okay. Did you work with her
22 on a number of matters?

23 A. No.

24 Q. Only Genomatica?

25 A. Genomatica, and Ms. Fischman

1 J. BERMAN

2 previewed a litigation matter that is
3 still ongoing as something that may
4 become an issue that required outside
5 counsel.

6 Q. Okay. I'm not going to ask
7 you the details of any other legal
8 matters other than Genomatica, okay?
9 Have you had the opportunity to work
10 with any other acting general counsel
11 or general counsel in your professional
12 capacity?

13 A. Sure.

14 Q. And generally speaking, did
15 you form an opinion of Ms. Fischman's
16 competency as an attorney?

17 A. Yes.

18 Q. And what was your impression
19 of Ms. Fischman's competency as an
20 attorney?

21 A. I held her in high regard.

22 Q. Okay.

23 A. She was very engaged, and in
24 particular at one point in time I
25 remember I had drafted a motion. It

1 J. BERMAN

2 was very late at night, and I got it
3 back from her with quite a lot of red
4 lines, which I took in good spirits,
5 and we worked together to refine
6 whatever motion I was writing to
7 improve it.

8 Q. And in comparison with other
9 attorneys that you've worked with in
10 either an acting general counsel or
11 general counsel role, would you say she
12 was on the same level as those other
13 professional relationships?

14 A. Too hard a question to
15 answer, Mr. Berman.

16 Q. Okay, that's fair. Did you
17 form any impression of her ethics as an
18 attorney?

19 MS. COLWIN: Objection.

20 A. I don't think I formed a
21 specific impression, but not because I
22 saw anything wrong, it's just that I
23 have the default assumption that my GCs
24 out of litigation are ethical, and
25 unless I see something that would

1 J. BERMAN

2 really startle me, I -- I wouldn't
3 focus on that one way or the other.

4 Q. Okay. Did anything in your
5 interaction with Ms. Fischman give you
6 cause to question her ethics as an
7 attorney?

8 A. To the best of my
9 recollection, no.

10 Q. Did you form an opinion as to
11 the depth of her legal knowledge in the
12 matters that you interacted with her
13 on?

14 A. I'm not sure what you mean by
15 legal knowledge, but Jen, like Nick
16 after her, rolled up her sleeves and
17 was an active participant in the case.
18 She wasn't hands-off. Some general
19 counsels just hand you litigation, and
20 you check in with them every few
21 months, and that was not our -- that
22 was not Ms. Fischman's style.

23 Q. Okay. Did you observe her to
24 have an appropriate level of legal
25 knowledge for the position that she was

1 J. BERMAN

2 in?

3 A. I'm not -- I'm not really
4 qualified to opine on that.

5 Q. Okay.

6 A. But I -- she seemed to be a
7 skilled attorney.

8 Q. Okay. And in communication
9 with Ms. Fischman, did you have any --
10 withdrawn.

11 Did you form any opinion as
12 to the communication skills that
13 Ms. Fischman had through your
14 interaction with her?

15 MS. COLWIN: Objection.

16 A. Yeah, I'm not, I don't know,
17 I'm not sure how to answer that.

18 Q. Okay. Did you observe any
19 gaps in her communication ability as
20 you interacted with her?

21 MS. COLWIN: Objection.

22 A. I'm still, without trying to
23 be in any way difficult or not respond,
24 I'm not entirely sure what you mean.

25 Q. Were your communications that

1 J. BERMAN

2 you received from Ms. Fischman clear?

3 A. I see, yes, I think, and she
4 was responsive.

5 Q. Okay.

6 A. If I had a question, she
7 would respond quickly and so forth.

8 Q. And her written
9 communications to you -- withdrawn.

10 Did you have any opportunity
11 to observe Ms. Fischman's communication
12 with her clients?

13 A. By her clients, do you mean
14 Tomoji and Utsunomiya-san?

15 Q. Yes, we can call them the
16 stakeholders, if that works for you.

17 A. Yeah, we had a number of
18 phone calls together with those two
19 individuals in particular.
20 Utsunomiya-san is a scientist, and to
21 the best of my recollection, Minami-san
22 is an attorney, Japanese qualified
23 attorney.

24 Q. Okay. And did you observe
25 that her communications with those

1 J. BERMAN

2 individuals were clear?

3 A. There's a caveat to the
4 answer, which is that we had calls at
5 like 11 at night or ten at night, and
6 there were topics that were really
7 complicated that we were discussing.
8 So we -- for instance, there was a
9 concern throughout that Genomatica
10 could simply file for bankruptcy, and
11 there was a material question as to
12 what would happen to our claim, and in
13 particular to intellectual property
14 owned or held in some form by MCC if
15 there were to be a bankruptcy. And
16 then if you layer on top of that a
17 language barrier, my recollection is
18 that Jen and I did our best to provide
19 very detailed, and kind of all the pros
20 and cons and lay out all the situations
21 for Utsunomiya-san and Minami-san, but,
22 you know, those are hard things to
23 explain to anybody at a very high level
24 in detail, let alone to folks for whom
25 English is a second language and, you

1 J. BERMAN

2 know, with such a time, yeah.

3 Q. Moving on to the Genomatica
4 matter, did you work with anyone other
5 than Ms. Fischman and Mr. Oliva on that
6 matter from the Mitsubishi side?

7 MR. ANHANG: Excuse me, I'm
8 going to --

9 MR. BERMAN: I'm going to
10 withdraw the question.

11 Q. On the Genomatica matter, did
12 you work with Ms. Fischman?

13 A. Yeah.

14 Q. Did you work with Mr. Oliva?

15 A. Yes.

16 Q. Did you work with any other
17 in-house attorneys on that matter?

18 A. To the best of my
19 recollection, no.

20 Q. And you already described the
21 type of manner of litigation, but can
22 you tell us who is the plaintiff party
23 in that matter?

24 A. Mitsubishi Chemical
25 Corporation.

1 J. BERMAN

2 Q. So when it came to settlement
3 of that matter, do you recall -- do you
4 recall attending, or I think you called
5 it an INE, right --

6 A. It's an ENE.

7 Q. An ENE?

8 A. And that's just southern
9 district of Cal parlance. Different
10 courts call it different things. But
11 SD Cal calls it an early neutral
12 evaluation.

13 Q. Right, so ENN -- or ENE,
14 right?

15 A. ENE, that's right.

16 Q. Okay. And do you recall
17 whether the matter -- you were asked
18 about this earlier, but do you recall
19 testifying concerning whether the
20 matter settled at the first neutral
21 mediation?

22 A. Yeah, I now realize it
23 couldn't have, because we went out
24 there in November, didn't settle, and I
25 remember going to dinner with Nick and

1 J. BERMAN

2 Tomoji and Utsunomiya-san. We were all
3 exhausted, particularly the two
4 gentlemen from Japan. After we
5 successfully resolved the matter, this
6 was in san Diego, so there must have
7 been a second ENE that we attended or a
8 further settlement conference of some
9 kind.

10 Q. Do you know whether that was
11 on or around February of 2017?

12 A. Yeah, that's right. Because
13 I had moved to White & Case by that
14 point, and right after I joined White &
15 Case I went back -- you have refreshed
16 my recollection. There were two ENES.
17 Right after I moved to White & Case, I
18 went back out to San Diego, and I
19 stayed at that hotel right across from
20 the ballpark. And that's when
21 Mr. Oliva and I were able to obtain a
22 satisfactory settlement offer from
23 Genomatica.

24 Q. Okay. Turning your attention
25 back to the first ENE, I'll just call

1 J. BERMAN

2 it an ENE, does that work?

3 A. Yeah.

4 Q. Okay. So turning your
5 attention back to the first ENE, did
6 you have express settlement authority
7 at a fixed sum for that first ENE?

8 A. Well, Nick was with me, and
9 Nick was the designee of Mitsubishi
10 Chemical Corporation who had settlement
11 -- I didn't have anything. I had my
12 boss and my client with me.

13 Q. Understood. Do you know
14 whether Nick had expressed settlement
15 authority at a fixed sum?

16 A. I don't know whether there
17 was a fixed sum, but MCC had designated
18 Nick in accordance with the rules as
19 the person to participate in the ENE
20 with settlement authority. So I would
21 imagine either we had settlement
22 authority, or there was some protocol
23 put in place whereby if we got it and
24 we were close, Nick would just pick up
25 the phone and have a conversation with

1 J. BERMAN

2 the folks in Japan and make a, you
3 know, decision on how to proceed.

4 Q. You'd done other ENEs prior
5 to that one, correct?

6 A. I think that was my only
7 technical ENE in the southern district
8 of California, but I've certainly done
9 many mediations over the course of my
10 career, or settlement conferences,
11 sure.

12 Q. Normally when you have a
13 mediation or a settlement conference
14 when you're representing a party, do
15 you usually have settlement authority
16 that is specified to you ahead of time?

17 MS. COLWIN: Objection.

18 A. With respect, I can't answer
19 that question in the form it's asked.

20 Q. Okay. Did you have any
21 discussions with Mr. Oliva about the
22 amount of settlement authority that
23 your team was bringing to the ENE?

24 MS. COLWIN: Objection.

25 A. I'm sure we did. But the

1 J. BERMAN

2 fixation, not just by you, Mr. Berman,
3 but by everyone, with me knowing a
4 specific number as discussed between
5 either Mr. Oliva and the folks in Japan
6 or Ms. Fischman and the folks in Japan,
7 sort of misapprehends the nature of the
8 situation. If and -- when Nick and I
9 were sitting there negotiating our
10 hearts out and doing the best we could
11 for the client to obtain the prevailing
12 results, you know, we live in an age of
13 smart phones and ongoing communication,
14 and so I don't know that I ever said,
15 you know, Nick, do we have a hard stop
16 at X number or, you know, it was more
17 realtime, you know, two colleagues or
18 lawyer and client, but given that Nick
19 and I were both attorneys, it was much
20 more like two colleagues working in
21 good faith to get to the best result we
22 could. That's the best I could tell
23 you.

24 Q. Thank you for explaining
25 that. With respect to that first ENE,

1 J. BERMAN

2 when you describe interactions in
3 realtime, are you referring to your
4 interactions with, Nick who attended
5 with you, or are you referring to
6 interactions with stakeholders who
7 might be in Japan?

8 A. Well, the stakeholders in
9 Japan were obviously in Japan. But
10 with both Jen and Nick, they were a
11 phone call away, and cared about the
12 result, clearly. And so I guess I was
13 referring to my interactions with Nick,
14 and the way that we -- I don't know the
15 precise word. It felt like we were a
16 team, and we were there to obtain the
17 best result that we could.

18 Q. Did you understand, when you
19 attended the first ENE, that it would
20 be necessary to communicate with people
21 in Japan?

22 A. I don't have an understanding
23 one way or the other.

24 Q. So it was your understanding
25 that the settlement authority at the

1 J. BERMAN

2 ENE would derive through Nick, correct?

3 A. Not exactly. What I said is
4 that Nick was designated as the
5 representative of MCC for the purposes
6 of the ENE. I didn't have a fully
7 formed, if you will, view one way or
8 the other on an issue that appears on
9 the outside to be central to the
10 litigation, which is from when
11 authority, you know, originated as to
12 every single point. But I viewed Nick
13 as, from my perspective, what Nick said
14 was what we were going to do.

15 Q. Okay. Did you -- normally --
16 do you have an understanding of what it
17 means to designate somebody as the
18 representative for an ENE?

19 MS. COLWIN: Objection.

20 A. Yeah, I think so.

21 Q. Okay. Does that person who
22 is designated have to come to the ENE
23 in possession of some level of
24 settlement authority?

25 MS. COLWIN: Objection.

1 J. BERMAN

2 A. I think that's probably
3 right. But very often in practice,
4 stakeholders, so like, I don't know
5 what precise settlement authority
6 conversations he had with Japan or
7 didn't have with Japan, I wasn't privy
8 to those. But my belief was that
9 everybody on our side was acting in the
10 best of faith to comply with the court
11 rules, and more than that, achieve a
12 result for our client.

13 Q. Did you make any provisions
14 for making sure you would have realtime
15 access to stakeholders in Japan during
16 the ENE?

17 A. I don't -- I don't recall,
18 you know, there's the time difference,
19 and as I said, I don't recall, either,
20 if Mr. Oliva had received specific
21 directives from Japan as to a bottom
22 line number. I just don't recall.
23 It's very possible that they
24 communicated to me at the first ENE,
25 this is the bottom line as stated from

1 J. BERMAN

2 Japan. But I can't recall the
3 conversation. Certainly could have
4 happened. I just, you know --

5 Q. So did you yourself make any
6 provision to be able to contact the
7 individuals in Japan during the ENE?

8 A. No. At least I don't believe
9 so. If I just sent an email that
10 said -- I don't believe so. I mean, I
11 think Nick was the designee.

12 Q. Did you have any discussion
13 with Ms. Fischman leading up to the ENE
14 about having \$2 million of settlement
15 authority to settle the matter?

16 MS. COLWIN: Can we have the
17 question repeated, please.

18 MR. BERMAN: Read that back,
19 please.

20 (Requested portion of the
21 record was read back.)

22 A. It's entirely possible that I
23 did, but sitting here today four years
24 later, more than four years later, I
25 just can't remember a specific

1 J. BERMAN

2 conversation to that effect, yes or no.

3 Q. Okay. Did you have any
4 conversation with Mr. Oliva about
5 having \$2 million of settlement
6 authority for the ENE?

7 A. Same answer, Mr. Berman, I
8 absolutely may have had that
9 conversation, but four years after the
10 fact it's very hard to recall specific
11 conversations one way or the other,
12 whether we had it or not.

13 Q. So whatever settlement
14 authority was possessed at the ENE, you
15 could have made any demand higher than
16 that number, correct, during the ENE?

17 MS. COLWIN: Objection.

18 A. Not necessarily. I mean, you
19 know, we were under a clear directive
20 not to antagonize the other side, and
21 in so doing, to impair the progress of
22 settlement discussions. So I'm pretty
23 sure Nick would have been displeased
24 if, in the middle of the, ENE I turned
25 to Stiegler and said, You know what,

1 J. BERMAN

2 you're being difficult and you have no
3 basis for any of this, and now we want
4 ten million. That was not --

5 Q. Let's try it again with the
6 proviso that we're not talking about a
7 situation where you're being
8 antagonistic or something. I'm asking
9 about the mechanics of settlement
10 authority on behalf of a plaintiff.
11 When a plaintiff makes a settlement --
12 withdrawn.

13 When you go into settlement
14 on behalf of a plaintiff, and you're
15 granted an express amount of settlement
16 authority --

17 A. I need to close my blinds,
18 because the sun is shining at a very
19 acute angle.

20 Q. Let me try asking the
21 question.

22 A. It's very dark, is that okay
23 for the --

24 THE VIDEOGRAPHER: We need
25 more light -- there we go.

1 J. BERMAN

2 Q. I'm asking how the demand
3 works and settlement authority works,
4 and I want to make sure I understand
5 correctly that where a client
6 authorizes you with settlement
7 authority on behalf of a plaintiff
8 party, if their authority is X, that --
9 if your authority to settle the matter
10 is X, then you're implicitly or
11 expressly authorized to make any
12 request for settlement above X; is that
13 correct?

14 MS. COLWIN: Objection.

15 A. It really depends on the
16 client. I have some clients who really
17 are hands-off in terms of -- and they
18 really kind of leave it to me to go
19 negotiate however I see fit, and I have
20 other clients who are much more -- who
21 have much more specific instructions.

22 Q. Okay, that's --

23 A. I've been to mediations where
24 they say, you know, or settlement
25 conversations where they say, if you

1 J. BERMAN

2 can get me to at least X, good, and how
3 you get there is up to you.

4 Q. Mm-hmm.

5 A. And I have other clients who
6 are more -- who have a more articulated
7 route and methodology that I am to
8 follow.

9 Q. Okay. Absent a limiting
10 instruction of the kind that you just
11 identified, the mechanics of settlement
12 is what I'm asking about. If a client
13 provides you with a sum certain in
14 terms of your settlement authority,
15 aren't you then authorized to settle
16 that amount for anything above the sum
17 certain in the case --

18 MS. COLWIN: Objection.

19 A. Are you asking me if someone
20 says, get me ten million bucks, and the
21 other side offers me 15, do I believe
22 I'm authorized to take it? Yes.

23 Q. Yes, okay, thank you.

24 A. And I ask for a bonus.

25 Q. And you will have earned it.

1 J. BERMAN

2 Did you have any discussion with
3 Mr. Oliva concerning who was providing
4 him with his settlement authority?

5 A. I mean, no, I knew that
6 Mr. Oliva was in regular contact with
7 the stakeholders in Japan, but he may
8 have, in fact, just come back from
9 Japan. At some point he took a trip
10 either right before or after our ENE,
11 first ENE. But I don't think I
12 specifically said to the general
13 counsel, Hey, you know, who gave you
14 your settlement authority, that would
15 be a little bit out of place for me to
16 ask that kind of question.

17 Q. Okay. Did you have any other
18 source of independent knowledge
19 concerning where his settlement
20 authority came from?

21 A. I don't believe so. If I
22 understand your question correctly, I
23 don't believe so.

24 Q. Did you have any discussions
25 concerning who should be designated as

1 J. BERMAN

2 the representative to attend the ENE,
3 the initial one?

4 A. Not my call.

5 Q. Did you have any discussions
6 over that topic, though?

7 A. Briefly. I mean, I was
8 somewhat surprised that -- I had
9 assumed it would be Ms. Fischman,
10 because she's the person I was working
11 with day-to-day, day in, day out. So
12 we had sort of, I think Jen and I had a
13 conversation where we were both like,
14 okay, wow. It designated Nick. And,
15 you know, my attention turned pretty
16 quickly -- it wasn't a derisive
17 conversation, it was just surprise on
18 my part, at least, and my attention
19 turned pretty quickly to wanting to
20 make sure that I could get Nick up to
21 speed and get him any information that
22 he needed --

23 Q. Okay.

24 A. -- and wanted to know about.

25 Q. And up until that point, you

1 J. BERMAN

2 had been interacting with Jennifer
3 Fischman as your primary contact on the
4 matter?

5 A. Correct.

6 Q. Did you have any discussions
7 with Ms. Fischman concerning the amount
8 of settlement authority that was being
9 brought to the ENE?

10 A. It's totally possible that I
11 did, but sitting here today I can't
12 remember one way or the other.

13 Q. Would you have had any
14 conversations with anyone else
15 concerning the amount of settlement
16 authority that was being brought to the
17 ENE?

18 A. Either Mr. Oliva or
19 Ms. Fischman would have been the two
20 people I spoke to about that topic.
21 Well, I suppose it's possible, I would
22 have to see my phone records. It's
23 possible that Nick and I had a call
24 with Japan prior to the first ENE, and
25 we had representatives from Japan at

1 J. BERMAN

2 the second ENE. I just don't remember.
3 So when you say, did you have such a
4 call, I don't want to say definitively
5 no. The correct answer is I don't
6 remember.

7 Q. Would your attorney records
8 reflect any such conversations?

9 A. Probably.

10 Q. Do you know if they still
11 exist?

12 A. I have no idea.

13 Q. Okay. Would those have been
14 at your prior firm or your current
15 firm?

16 A. Considering we're talking
17 about the time period of the first ENE,
18 which is in 2016, they would be at my
19 prior firm.

20 Q. Did there come a time when
21 the Genomatica matter was settled?

22 A. There did.

23 Q. And do you know whether any
24 of the settlement terms reflected a
25 payment over some period of time?

1 J. BERMAN

2 A. I do believe there were
3 payments over time, yeah.

4 Q. Do you know what the length
5 of the time period is?

6 MS. DONEHOWER: Mr. Anhang
7 and Ms. Colwin, can you let us know
8 if Mr. Berman is able to answer
9 these questions?

10 MS. COLWIN: It's going to be
11 Mr. Anhang.

12 MR. ANHANG: So far, yes,
13 I'll jump in to caution and direct
14 the witness, but Josh, go ahead.

15 THE WITNESS: Did you say go
16 ahead?

17 MR. ANHANG: Yes.

18 A. I'm sorry, can you ask the
19 question again? I lost it.

20 MR. BERMAN: Can you read it
21 back, please?

22 (Requested portion of the
23 record was read back.)

24 A. I'm sorry, forgive me. I'm a
25 little lost.

1 J. BERMAN

2 Q. Just asking if you know what
3 the payment term was.

4 A. I would have to look at the
5 settlement agreement.

6 Q. Okay. Is the settlement
7 confidential?

8 A. Probably.

9 Q. Okay. I won't ask you any
10 further questions on the details, then.

11 MR. BERMAN: Mr. Anhang?

12 MR. ANHANG: Yes.

13 MR. BERMAN: Okay, do you
14 have any objection to me asking him
15 the amount of the final
16 settlements?

17 MS. COLWIN: I'm going to
18 raise an objection.

19 MR. BERMAN: Whose objection
20 is that?

21 MS. COLWIN: Mercedes Colwin.
22 I'm just reserving it. Relevance
23 is what I would say, but...

24 MR. BERMAN: Maybe can I ask
25 it a different way, and we can see

1 J. BERMAN

2 if there's a problem with that.

3 Q. Do you know if the matter
4 ultimately settled for more than
5 2.3 million?

6 A. I don't think it did.

7 Q. Okay.

8 A. Except that I would say,
9 sorry, there were some IP -- there was
10 some -- let me rephrase. There was
11 some nonmonetary components of the
12 settlement, and I don't know how to
13 value those.

14 Q. Do you know whether the
15 monetary component of the settlement
16 ended up being more than \$2.3 million?

17 A. I don't believe it was.

18 MS. COLWIN: Objection.

19 Q. Do you know whether it was
20 more than \$2 million?

21 A. I feel like it was right
22 around there. I really would have to
23 go back and look.

24 Q. Did you work with Jennifer
25 Smith on the Genomatica matter in the

1 J. BERMAN

2 first week of January of 2017?

3 A. With Jennifer Smith?

4 Q. I'm sorry, Jennifer Fischman,
5 excuse me.

6 A. Did I work on the Genomatica
7 matter with Jen in the first week of
8 January 2016?

9 Q. 2017, yeah.

10 A. 2017.

11 Q. Mm-hmm.

12 A. I think so, yeah, that's when
13 we had the call with -- I think so.

14 Q. Do you recall being asked
15 questions about exhibits relating to
16 the first week of January --

17 A. Yeah, yeah, I think that's
18 right, I think so.

19 Q. And do you recall one of the
20 emails that we reviewed today
21 mentioning that Jennifer was out sick
22 for the week?

23 A. I do, I'm -- I do recall
24 seeing that.

25 Q. Okay. And do you recall

1 J. BERMAN

2 Ms. Fischman being out sick for a week
3 in the beginning of January of 2017?

4 A. I don't have an independent
5 recollection of that, but I have no
6 reason to doubt it.

7 Q. Did you have any discussions
8 with Ms. Fischman concerning the amount
9 of an appropriate settlement after the
10 first ENE completed?

11 A. We must have, right? I mean,
12 the first ENE was in November.

13 Q. Mm-hmm.

14 A. And the emails we looked at
15 were from a time period subsequent to
16 that. So yes, Ms. Fischman and I
17 continued to work together after the
18 first ENE.

19 Q. On or about the beginning of
20 January of 2017, did you have a
21 conversation with Ms. Fischman
22 concerning a discussion she related to
23 you between her and Mr. Oliva
24 concerning the settlement amount?

25 A. On or about what date?

1 J. BERMAN

2 Q. In the first week of
3 January 2017.

4 A. Did Jen have a conversation
5 with me about a conversation she had
6 with Nick?

7 Q. Yes.

8 A. It's possible, but I just
9 don't remember.

10 Q. Okay. Did Ms. Fischman
11 suggest to you that Nick wanted to make
12 a settlement demand of \$2.2 million?

13 A. I'm sorry, I feel -- wish I
14 had a more precise recollection of
15 these daily events, but it's possible
16 she did, but I just don't have a
17 specific recollection one way or the
18 other.

19 Q. Did you have any conversation
20 with Ms. Fischman concerning the
21 \$2.3 million settlement demands?

22 A. Must have, because I wouldn't
23 have written to Anthony Stiegler, I
24 have been authorized to come in at 2.3,
25 unless I had been authorized to come in

1 J. BERMAN

2 at 2.3.

3 Q. Okay. Did you have any --
4 did Ms. Fischman relate to you that she
5 was authorized by Mr. Oliva to make
6 that demand?

7 A. I just can't remember. I
8 mean, for what it's worth, Mr. Berman,
9 I wouldn't in the ordinary course have
10 questioned Jen on one of her marching
11 orders. She was, you know, I answered
12 to her, as I did with Mr. Oliva, and
13 she was conscientious and up to date,
14 to the best of my discernment, and
15 like, I would never have said to her,
16 you know, Hey, person who hired me,
17 prove to me that you're actually
18 authorized to give me this, it's just
19 not a question I would have asked.

20 Q. Okay. So you understood at
21 the time that the 2.3 million that
22 Ms. Fischman conveyed to you, that she
23 was authorized to do that, correct?

24 MS. COLWIN: Objection.

25 A. I would say I assumed that.

1 J. BERMAN

2 Q. Okay, but you --

3 A. You know, I -- that's the
4 best way I know how to answer the
5 question, I assumed that.

6 Q. Okay. And do you recall her
7 being sick at the time?

8 A. I saw the email, we talked
9 about it.

10 MS. COLWIN: Objection.

11 A. And so she totally may have
12 well been sick at the time, I just
13 don't have a recollection of whether
14 she was or wasn't.

15 Q. So after this \$2.3 million
16 demand was made, do you know whether
17 the demand was accepted?

18 A. I do know.

19 Q. Was it accepted?

20 A. No.

21 Q. Okay. Was it withdrawn?

22 A. That's a little weird. I
23 don't know if we were going to a second
24 ENE pretty quickly after that, or
25 Stiegler reached out to me again. I

1 J. BERMAN

2 don't recall -- he might have
3 countered, I really don't recall. But
4 I don't think, I don't think that I
5 called him up and said, I just want you
6 to know this is wrong.

7 Q. Did anyone at Mitsubishi
8 instruct you to withdraw the
9 \$2.3 million demand after it was
10 articulated?

11 MR. ANHANG: I'm going to
12 object to that on the grounds,
13 among other things, that it's vague
14 with regard to the use of the term
15 Mitsubishi. Not at all clear to me
16 who is being referenced by the use
17 of the term Mitsubishi.

18 MR. BERMAN: That's fair.

19 Q. Let's clarify. Did Mr. Oliva
20 instruct you to withdraw the demand
21 after it was articulated?

22 A. Not to the best of my
23 recollection.

24 Q. Okay. Did any of his
25 colleagues instruct you to withdraw the

1 J. BERMAN

2 demand?

3 A. I only ever spoke to
4 Mr. Oliva and to Ms. Fischman about
5 this matter.

6 Q. Okay. So nobody instructed
7 you to withdraw the demand?

8 A. Again, it's possible that
9 someone did. But to the best of my
10 recollection, sitting here today, I
11 can't remember a communication to that
12 effect.

13 Q. Okay. When you went to the
14 second ENE, did you have any express
15 settlement authority that you were
16 aware of?

17 A. Well, at the second ENE,
18 Utsunomiya-san and Minami-san were
19 together with us, so we had, if you
20 will, the litigant itself right there.
21 So I understood at a remove that, you
22 know, they had to, they ultimately
23 answer to Takimoto-san and other --
24 maybe Sakaguchi-san and other very
25 senior people -- or I can just give a

1 J. BERMAN

2 clearer answer, which is at the second
3 ENE, we had representatives from Japan
4 with us. So it was, you know, the
5 litigant itself, the captioned litigant
6 was sitting in the room physically.

7 Q. Okay. Do you know whether
8 after making the \$2.3 million demand,
9 was any demand for a higher dollar
10 value ever articulated?

11 A. It's not impossible, but I
12 doubt it.

13 Q. Okay. Did you ever have a
14 discussion with Ms. Fischman where she
15 informed you that she just came from
16 Nick Oliva's office to discuss the
17 settlement?

18 A. It's totally possible. I
19 can't dispute it or confirm it. I'm
20 sorry about all of you for my evidently
21 deficient recollection of these events.

22 Q. That's fine, you know what
23 you know and you remember what you
24 remember, we appreciate --

25 A. I have been on the other side

1 J. BERMAN

2 of this conversation so many times and
3 wondered, how can you not remember
4 these things.

5 Q. I understand. Did
6 Ms. Fischman ever discuss with you any
7 disagreement with Mr. Oliva concerning
8 whether to demand a number of 2.2 or
9 \$2.3 million?

10 A. I don't recall that.

11 Q. Okay. Did there come a time
12 when Ms. Fischman was terminated?

13 A. To the best of my
14 understanding, yes.

15 Q. Okay. How did that come to
16 your attention?

17 A. Nick called me, and in a very
18 modulated way, said, I want you to hear
19 this from me. We had to -- words to
20 the effect of -- I'm not purporting to
21 quote him -- we've had to separate from
22 Ms. Fischman. I recall Nick being
23 careful to say, we don't want to
24 involve you, and this is not, we don't
25 feel that you've done anything, you,

1 J. BERMAN

2 Josh, have done anything improper or
3 unwarranted. And this is between, sort
4 of between us on our side of the table,
5 and we kind of left it at that. I
6 mean, it seemed that if Nick wanted to
7 tell me more, he could have told me
8 more, but he was, you know, being
9 discreet.

10 Q. Okay. What was your reaction
11 to learning that Ms. Fischman had been
12 terminated?

13 A. I was surprised.

14 MS. COLWIN: Objection.

15 Q. Why were you surprised?

16 A. I had no knowledge -- well,
17 two reasons. I told you that I had a
18 good opinion of Jen as a conscientious
19 attorney and as devoted and, you know,
20 to the case and our work. And two, I
21 had no knowledge that there's any
22 friction behind the scenes that might
23 lead to something, but -- like that.
24 But of course, and this is very
25 important for me to say, I don't know

1 J. BERMAN

2 what I don't know. Whatever things
3 took place outside of my presence took
4 place outside of my presence, and I
5 can't express an opinion one way or the
6 other, and don't want to be understood
7 as expressing an opinion one way or the
8 other as to what's right and what's
9 wrong here relative to the claim at
10 issue.

11 Q. I understand.

12 A. I have no knowledge of that.

13 Q. Okay, I'm just interested in
14 what you've observed in the preceptory
15 sense way. Okay.

16 Did Ms. Fischman ever call
17 you after she was terminated?

18 A. We spoke at some point. Like
19 I said earlier, we went to dinner with
20 Lee and Lisa at a Colombian restaurant
21 in Portchester. I can't remember if
22 the barbecue at Ms. Fischman's house --
23 I think that was before her
24 termination.

25 Q. After her termination, did

1 J. BERMAN

2 she call you to inform you that she had
3 been terminated? So right around the
4 time you had spoken to Mr. Oliva.

5 A. Probably. Probably, but I'm
6 not positive, actually.

7 Q. All right. Do you recall any
8 of the elements of that discussion?
9 What did she say to you, what you say
10 to her?

11 A. I think there was something
12 around, to the best of my recollection,
13 there was something about Ms. Fischman
14 having just conducted an ethics
15 seminar.

16 Q. Okay.

17 A. And her being shocked,
18 essentially, that after that she would
19 be -- she was terminated.

20 Q. Okay. Did you have any
21 discussion with her about the
22 \$2.3 million settlement demand after
23 she was terminated?

24 A. I don't believe so, but I
25 can't -- I just can't say definitively.

1 J. BERMAN

2 I mean, at this point, just so everyone
3 knows, I was like, Oh, boy, you know,
4 this is a very uncomfortable position,
5 a few people I respect and like. I
6 hope not to be in the middle of this.
7 And everyone has largely honored that,
8 for which I'm grateful. It's possible
9 that the subject of the 2.3 was brought
10 up in a conversation with Jen. I'm
11 sorry that I can't give you more
12 detail.

13 Q. Okay, I appreciate that. So
14 as between these two phone calls, do
15 you know sequentially the order of
16 them, did one happen before the other?

17 A. First of all, I'm not sure
18 there were two.

19 Q. Okay.

20 A. Second of all, I'm also
21 trying to separate out, like, a social
22 call, which could have gone to my
23 wife -- by the way, we also played
24 doubles tennis once. At any rate, I'm
25 sorry, I don't have greater detail than

1 J. BERMAN

2 that.

3 Q. Okay. Was there any
4 discussion over whether the
5 \$2.3 million demand was authorized
6 after she was terminated, Ms. Fischman?

7 A. Totally possible that when
8 Jen called to let me know she was
9 terminated, totally possible the issue
10 you're describing came up, but I can't
11 attest to it one way or the other.

12 Q. Do you know where the
13 \$2.3 million figure came from?

14 A. I mean, I had a view -- the
15 answer is no, but I have a view, which
16 was that I proposed 2.5 split over six
17 months, and it didn't seem in any way
18 bizarre to say, Well, let's knock the
19 number down a little bit, but
20 illuminate the chronological runway.

21 I don't have a specific
22 knowledge of the derivation of the
23 figure, but it didn't strike me in the
24 moment as, like, a -- it seemed
25 perfectly logical.

1 J. BERMAN

2 Q. Okay. Did Ms. Fischman
3 inform you that there is an allegation
4 that she had breached her attorney's
5 ethics?

6 A. I want to say that rings a
7 bell, Mr. Berman, because I think
8 that's why the ethics seminar or ELE or
9 whatever it might have been must have
10 come up.

11 Q. Do you know the general
12 nature of the accusation?

13 A. I mean, I've got the
14 complaint in front of me.

15 Q. I'm just interested in your
16 independent knowledge.

17 A. At a very high level, very
18 high level, there was some
19 miscommunication between Jen and Japan
20 that either was or wasn't wrongful,
21 depending on who you ask, and -- sorry
22 for the noise -- the claim revolved
23 around that, I believe. And, you know,
24 there's obviously a formal wrongful
25 termination suit.

1 J. BERMAN

2 Q. Okay. Do you know whether
3 the \$2.3 million demand was higher than
4 any previously disclosed settlement
5 authority that either Nick Oliva or Jen
6 Fischman had?

7 MS. COLWIN: Objection.

8 Q. Do you understand the
9 question?

10 A. Not really.

11 Q. Okay. So do you know whether
12 the \$2.3 million settlement demand was
13 higher than any settlement authority
14 previously revealed to you?

15 MS. COLWIN: Objection.

16 Q. Do you understand the
17 question?

18 MR. ANHANG: I'm going to
19 join in that objection, and indeed,
20 I'm joining all objections made by
21 MCHA's counsel.

22 A. I don't -- I don't know. I
23 just don't recall, sorry. It's
24 possible that at a certain point we
25 made -- and I'm not sure if it was a

1 J. BERMAN

2 settlement, we certainly set it up in
3 the complaint, plus that's what you're
4 interested in, other relief. I just
5 don't remember if that was communicated
6 in the settlement conversation.

7 Q. Okay. Prior to the
8 \$2.3 million settlement demand, were
9 you ever made aware of any express
10 settlement authority at a specific
11 amount or higher?

12 MS. COLWIN: Objection.

13 A. I don't recall.

14 Q. Did you ever participate in
15 any telephone calls or other verbal
16 communications where you were on with
17 both Ms. Fischman and Mr. Oliva at the
18 same time?

19 A. What's another verbal
20 communication besides a telephone call?

21 Q. Could have been face to face.

22 A. I don't believe I ever saw
23 them in a face-to-face.

24 Q. Okay.

25 A. I don't believe I've ever

1 J. BERMAN

2 spoken to them at the same time on the
3 phone, but I can't rule that out.

4 MR. BERMAN: Just checking my
5 notes, I think we might be done.

6 MR. ANHANG: Matthew, while
7 you're referring to your notes, let
8 me just say something at this
9 point. This may go to any further
10 questions you have, but I know it
11 goes to some questions you already
12 asked. There have obviously been
13 some references that have been put
14 on the record today with regard to
15 the ultimate actual settlement
16 agreement between MCC and
17 Genomatica, and I want to designate
18 those references as confidential.
19 They should be treated as
20 confidential by all counsel here,
21 and others, and anyone who wants to
22 make a disclosure of any of those
23 references, I would insist that
24 they contact me first to discuss
25 them.

1 J. BERMAN

2 REPORTER: Should I mark the
3 transcript confidential?

4 MS. COLWIN: Yes, please.

5 MR. ANHANG: Matthew, any
6 objection to what I just said?

7 MR. BERMAN: To requesting
8 your authorization prior to
9 disclosure of any confidential
10 portions of the transcript; is that
11 what it was?

12 MR. ANHANG: Also designating
13 --

14 MR. BERMAN: I have no
15 objection to designating any
16 portion of the transcript relating
17 to the settlement amount or the
18 settlement terms as confidential,
19 and my understanding is that
20 there's a confidentiality agreement
21 or order in the case, but counsel
22 can correct me if I'm
23 misremembering.

24 MS. COLWIN: There is, I was
25 about to state on the record that

1 J. BERMAN

2 there is a stipulation of
3 protective order so ordered by
4 SCNY, and we're going to abide by
5 the protocols in place.

6 MR. BERMAN: We will abide by
7 the protocols as well, obviously.

8 Q. You referred to an individual
9 earlier named Takimoto-san, correct?

10 A. I think so.

11 Q. Was Takimoto-san involved in
12 the first ENE?

13 A. I think Takimoto-san was the
14 boss of the whole kit and caboodle. He
15 might have been extremely high-ranking.
16 So no, at least not directly.

17 Q. Going into the first ENE, did
18 you have a sense of what you can
19 actually settle the matter for?

20 A. Sorry, I don't recall.

21 Q. Okay. And did you have any
22 written authorization of your
23 settlement amount with Nick going into
24 that ENE?

25 A. Did I have any written

1 J. BERMAN

2 authorization? No, Nick was with me.

3 Q. I mean, was there any written
4 record leading into the ENE that set
5 forth what the likely settlement range
6 was, or what your actual authority to
7 settle was?

8 MS. COLWIN: Objection,
9 there's been two ENEs. Can we just
10 get a clarification which one?

11 MR. BERMAN: I'm only asking
12 about the first ENE.

13 MS. COLWIN: November 16,
14 2016?

15 MR. BERMAN: Right.

16 A. I just don't know the answer
17 to that.

18 Q. Okay.

19 MR. BERMAN: I have no --

20 A. It's also possible I wasn't
21 copied on it.

22 MR. BERMAN: I have no
23 further questions for the deponent
24 at this time, thank you.

25 MS. COLWIN: I need to take a

1 J. BERMAN

2 two-minute break.

3 THE VIDEOGRAPHER: Stand by,
4 I'm going to change out this media
5 unit. This is the end of media
6 unit number two, we are now off the
7 record at 1:46 p.m.

8 (Recess.)

9 THE VIDEOGRAPHER: This is
10 the beginning of media unit number
11 three, we are now on the record at
12 1:54 p.m.

13 Q. Mr. Berman, you had testified
14 earlier that you had worked with
15 Ms. Fischman on two matters;
16 Genomatica, which we have talked to
17 extensively today, but also another
18 matter, Mitsubishi Chemical Composites;
19 is that right?

20 A. Yeah, but we didn't really
21 work together in the second one. She
22 just sort of previewed that it may be
23 something that was coming down the
24 pike.

25 Q. I just wanted to make sure

1 J. BERMAN

2 the record is clear, your knowledge of
3 Jennifer's work is really limited to
4 your interactions with Ms. Fischman in
5 the Genomatica matter then, correct?

6 A. That's right.

7 MS. COLWIN: Mr. Berman, I so
8 appreciate your time. Thank you
9 for obliging with the subpoena that
10 was issued. We appreciate it. I
11 know that you have many other
12 things on your plate, and spending
13 time with us may not be the first
14 thing you thought of today, so we
15 do appreciate the time you spent
16 with us. I have nothing further.

17 MR. BERMAN: Thank you,
18 nothing further at this time.

19 MR. ANHANG: Nothing further
20 on my end.

21 MS. COLWIN: Thank you all
22 very much.

23 THE VIDEOGRAPHER: Counselor,
24 I'm sorry, we are concluded,
25 correct?

J. BERMAN

MS. COLWIN: We are
concluded.

THE VIDEOGRAPHER: We are off
the record at 1:55 p.m., and this
concludes today's testimony given
by Joshua Berman. The total number
of media units used was three, and
will be retained by Veritext New
York.

(Time noted: 1:56 p.m.)

JOSHUA BERMAN

Subscribed and sworn to
before me this _____
day of _____, 2020.

Notary Public

I N D E X

WITNESS	EXAMINATION BY	PAGE
BERMAN	MS. COLWIN	9
	MR. BERMAN	101

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exh 1	First amended complaint jury trial demand	25
Exh 2	Bates stamped Def 001419.	53
Exh 3	Bates stamped Def 000876	57
Exh 4	Bates stamped Def 1422 and Def 1423	63
Exh 5	Bates stamped Def 872 and 873	67
Exh 6	Bates stamped Def 1842 to Def 1847	67
Exh 7	Bates stamped Def 1907 to 1908	72

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exh 8	Bates stamped Def 2301	74
	and 2302	
Exh 9	Bates stamped Def 882	76
	and Def 883	
Exh 10	Bates stamped Def 884	81
	to 886	
Exh 11	Bates stamped Def 885	87
Exh 12	Bates stamped Def 2322	87
Exh 13	Bates stamped Def 2315	90
	to 2316	
Exh 14	Bates stamped Def 878	92
	and 879	
Exh 15	Bates stamped Def 844	95
	and 845	

CERTIFICATION

I, JEREMY RICHMAN, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of December,
2020.



JEREMY RICHMAN

* * *

ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: FISCHMAN v MITSUBISHI
DATE OF DEPOSITION: December 15, 2020
WITNESS' NAME: JOSHUA BERMAN

	PAGE / LINE (S) /	CHANGE	REASON
6	----- / ----- /	-----	-----
7	----- / ----- /	-----	-----
8	----- / ----- /	-----	-----
9	----- / ----- /	-----	-----
10	----- / ----- /	-----	-----
11	----- / ----- /	-----	-----
12	----- / ----- /	-----	-----
13	----- / ----- /	-----	-----
14	----- / ----- /	-----	-----
15	----- / ----- /	-----	-----
16	----- / ----- /	-----	-----
17	----- / ----- /	-----	-----
18	----- / ----- /	-----	-----
19	----- / ----- /	-----	-----
20	----- / ----- /	-----	-----

JOSHUA BERMAN
 SUBSCRIBED AND SWORN TO
 BEFORE ME THIS _____ DAY
 OF _____, 20____.

NOTARY PUBLIC
 MY COMMISSION EXPIRES _____

[& - 6:29]

Page 1

&	12:30 97:18	130:5,16 133:21	2322 87:11,15
& 2:3,11,14 8:17	12:44 97:22	133:24 134:21	156:9
12:8,11,16,21	13 90:12,15,22	135:15 136:9	25 155:12
13:11 23:13,25	91:3 156:10	138:8 139:9	26th 65:18
38:23 112:13,14	135,000 77:5	142:22 143:9	28 91:9
112:17	14 92:20,23 156:12	144:5,13 146:3,12	28th 3:5
0	1419 54:7,15	147:8	29 78:22
000876 57:4	1421 54:8,15	2.3. 134:2	29th 157:19
155:17	1422 63:18 64:2	2.5 77:6,24 79:10	3
001419 53:25	155:18	80:4 85:16 86:8	3 56:17,24 57:2,7
155:15	1423 63:19 64:2	88:15 144:16	57:13 84:4 155:16
08188 6:8	155:19	2.5. 83:2	3.5 98:2
1	14th 2:8	20 158:23	30 91:13
1 6:3 18:23 19:21	15 1:13 5:4 15:8	20004 2:12	30th 83:20
21:4 25:10 26:8	16:19 95:4,5	2016 17:24 18:13	3rd 86:6
155:12	123:21 156:14	20:22 25:22 64:18	4
1-10 1:9	158:4	66:7 69:5,14	4 63:15,24 64:5,10
1.5 91:10	16 69:5,14 70:19	71:25 78:22 83:21	155:18
10 6:3 80:8,14	71:25 151:13	91:9 102:8 127:18	401 2:12
81:19,23 156:6	16780 157:21	131:8 151:14	408 91:5
10001 2:9	18 6:8	2017 18:13 38:20	5
10004 3:5	1842 67:21,24	38:24 39:16 84:5	5 63:17 66:24 67:6
10020 2:16	155:22	84:20 85:10 87:23	67:10,12 68:4,6
101 155:7	1847 67:21,24	89:9,20,22 90:8	84:19 85:10 87:23
10583 6:11	155:23	97:24 98:3,12,23	89:9,20 94:22
10:00 1:14	1907 72:12,15	112:11 131:2,9,10	155:20
10:19 5:4	155:24	132:3,20 133:3	519 2:4
11 86:25 87:4	1908 72:12,15	2019 53:8	53 155:14
109:5 156:8	73:11,15 155:25	2020 1:13 5:4	57 155:16
11530 2:5	1:46 152:7	154:22 157:20	6
11:01 44:17	1:54 152:12	158:4	6 39:16 67:9,11,15
11:08 44:21	1:55 154:5	220 2:8	67:20,22 89:22
11:22 86:6	1:56 154:11	2301 74:19,25 75:7	90:8 94:24 97:23
11:58 81:9	2	156:2	98:3,12,23 155:22
12 16:20 87:3,10	2 21:5 25:2 53:23	2302 74:19,25	600 2:4
87:13 156:9	54:5,7,14 119:14	156:3	63 155:18
12/30/2016 83:15	120:5 130:20	2315 90:19,24	67 155:20,22
1221 2:16	155:14	156:10	6:29 87:24 89:20
12:09 81:16	2.2 133:12 139:8	2316 90:20,24	
	2.3 91:12 96:3	156:11	
	98:16,22 99:19		

6th 91:17 93:17 99:20	90 156:10 92 156:12 95 156:14 9th 2:12	46:3 157:15 active 106:17 activity 52:18 62:16 77:17 actual 148:15 151:6 acute 121:19 adapt 75:14 addressed 98:15 administer 6:18 advance 35:4 adversary 47:20 advice 58:8,10 advising 94:11 affect 11:2,6,9 affiliations 6:25 afraid 20:19 103:11 age 115:12 aggressive 72:24 ago 15:9 16:9,23 17:14 31:16 37:5 agree 5:14 62:2 agreed 4:3,8,12 10:17 43:25 agreement 10:15 129:5 148:16 149:20 ahead 27:8 39:25 81:5 114:16 128:14,16 al 28:11 allegation 145:3 allegations 27:2 27:14,16 28:10 amended 25:11 26:6 27:3 155:12 amendment 26:2 america 1:6 5:21 7:12 9:5,24 24:8 27:17 36:3	american 49:6 americas 2:16 amicably 52:21 amount 51:12 77:6 78:3 89:11 114:22 121:15 123:16 126:7,15 129:15 132:8,24 147:11 149:17 150:23 amy 2:17 8:16 15:3 45:9 angle 121:19 anhang 2:13 7:15 7:16,16 22:19,21 45:7,9 50:20 53:9 53:13 57:14,16,21 58:2 110:7 128:6 128:11,12,17 129:11,12 136:11 146:18 148:6 149:5,12 153:19 anhang's 37:21 answer 14:23 22:11,17 23:7 46:7,18,20 48:9,21 50:23,25 51:9 53:11 57:15,17 66:14 74:12 76:21 96:25 105:15 107:17 109:4 114:18 120:7 127:5 128:8 135:4 137:23 138:2 144:15 151:16 answered 134:11 answering 22:23 25:3 45:16,23 58:4,13 answers 88:11
7	a		
7 72:9,11,13 155:24 72 155:24 74 156:2 76 156:4	a.m. 1:14 5:4 44:17,21 81:9 abide 150:4,6 abilities 32:25 ability 11:2,9 107:19 able 43:19 60:11 71:19 112:21 119:6 128:8 absent 123:9 absolute 51:3 absolutely 69:3 101:22 120:8 acceptable 49:14 accepted 13:12 135:17,19 access 118:15 accompanying 65:4 accomplishing 77:18 accurate 94:24 accurately 89:7 accusation 145:12 achieve 70:12 71:19 98:18 118:11 achieved 71:11 98:19 acronym 36:9 act 24:14 acting 31:3 102:17 103:6 104:10 105:10 118:9 action 1:18 6:7,20 23:10,11 28:24		
8			
8 74:16,23 156:2 800 2:12 81 156:6 844 95:4,7 96:7 156:14 845 95:4,7,23 156:15 87 156:8,9 872 67:6,14 155:20 873 67:7,14 68:5 155:21 876 56:25 877 56:25 878 92:22,25 93:10 156:12 879 92:22,25 156:13 882 76:3,11 79:4 156:4 883 76:3,11 78:10 79:8,20 156:5 884 80:14 81:21,25 156:6 885 84:2 87:6 156:8 886 80:14 81:22,25 82:20 156:7			
9			
9 74:19 76:2,9,18 83:2 155:6 156:4			

[antagonistic - believe]

Page 3

antagonistic 75:19 121:8 antagonize 120:20 anthony 133:23 anybody 100:8 109:23 apologize 57:25 appearance 7:4,25 appearances 2:2 3:2 6:24 appears 68:17 83:12,21 85:14 117:8 appreciate 21:17 69:4 138:24 143:13 153:8,10 153:15 approach 69:12 appropriate 69:24 106:24 132:9 area 102:8 arm 70:12,12 arrived 64:6 102:18 articulated 123:6 136:10,21 138:10 asked 73:3 96:21 97:4 99:23 111:17 114:19 131:14 134:19 148:12 asking 32:21 47:10 79:12 87:9 121:8,20 122:2 123:12,19 129:2 129:14 151:11 assessment 36:11 associate 33:16 associated 52:11 assume 38:12 assumed 38:4 103:8 125:9	134:25 135:5 assumption 105:23 attend 125:2 attendance 49:18 50:4,17 attended 15:13 16:15 30:7,12 69:5 112:7 116:4 116:19 attending 6:23 111:4 attention 33:7 41:2 93:10 112:24 113:5 125:15,18 139:16 attest 144:11 attorney 7:6 10:5 33:2 73:14 76:7 84:6 104:16,20 105:18 106:7 107:7 108:22,23 127:7 140:19 attorney's 145:4 attorneys 2:4,8,11 2:15 3:3 105:9 110:17 115:19 attractive 13:11 attributed 75:12 attribution 75:11 audio 5:12,12 authority 65:3 96:8 113:6,15,20 113:22 114:15,22 116:25 117:11,24 118:5 119:15 120:6,14 121:10 121:16 122:3,7,8,9 123:14 124:4,14 124:20 126:8,16 137:15 146:5,13	147:10 151:6 authorization 85:24 99:22 149:8 150:22 151:2 authorized 6:17 91:17 93:17 122:11 123:15,22 133:24,25 134:5 134:18,23 144:5 authorizes 122:6 available 101:10 101:14 avenue 2:8,16 avoid 52:24 aware 14:12 36:16 37:24 38:8 41:20 49:16,21,22,25 50:10 53:3 55:4 55:12,20 57:9 58:16,24 59:24 60:23 82:10,11,16 85:22 89:10 94:4 137:16 147:9	barrier 109:17 based 22:4 29:16 36:19 49:15 90:9 91:20 basis 29:12 61:2 63:11 69:21 121:3 bates 21:13 53:24 54:7 56:24 57:3 63:18,25 67:13,20 67:23 68:5 72:11 72:14 74:24 76:2 76:10 81:21,24 87:5,11,14 90:19 90:23 92:22,24 95:4,6 155:14,16 155:18,20,22,24 156:2,4,6,8,9,10 156:12,14 battery 3:4 becoming 103:14 beeped 54:19 began 52:7 102:14 beginning 7:5 81:14 132:3,19 152:10 behalf 22:21 45:14 91:8 96:24 121:10 121:14 122:7 belief 29:13 118:8 believe 17:5 19:7 25:20 30:18 31:12 32:20,22 35:11 38:19 41:18 47:25 50:6,9,10 51:2 52:16,22 58:3 65:5 67:25 86:4 86:10 89:24 90:2 91:15 94:16 99:17 102:6 119:8,10 123:21 124:21,23 128:2 130:17
		b b 155:10 back 21:21 23:17 39:17 40:12 42:15 51:12 70:9 79:22 81:16 82:3 84:23 85:12 89:4 97:22 100:23 101:13 105:3 112:15,18 112:25 113:5 119:18,21 124:8 128:21,23 130:23 ball 52:4 ballpark 112:20 bankruptcy 109:10,15 barbecue 16:22 141:22	

[believe - captioned]

Page 4

142:24 145:23 147:22,25 believed 27:2 69:23 believing 49:9 bell 145:7 berman 1:17 2:5 2:15 5:1,17 6:1 7:1 8:1,18,19,20 9:1,9,19 10:1 11:1 11:18,25 12:1,3 13:1 14:1 15:1 16:1 17:1 18:1,18 18:24 19:1,10,19 19:22,24 20:1,16 20:17 21:1,16,20 22:1 23:1 24:1,15 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1,25 36:1 37:1 38:1 39:1,11 40:1 41:1 42:1 43:1 44:1,7,22 45:1 46:1 47:1,21 48:1 49:1 50:1 51:1 52:1 53:1,11 53:16 54:1,2,21 55:1,3,8 56:1,18 57:1,5,18,24 58:1 59:1,3 60:1,4,13 61:1,17 62:1 63:1 63:14,16 64:1,3 65:1 66:1,23 67:1 67:8,17 68:1,3 69:1,4 70:1 71:1 72:1,7 73:1 74:1 75:1 76:1,17 77:1 78:1,8 79:1 80:1 81:1,6,17 82:1 83:1 84:1 85:1,22	86:1 87:1 88:1 89:1,7 90:1 91:1 91:15 92:1 93:1,7 94:1,6 95:1,15 96:1,22,23,24 97:1 97:9,23 98:1 99:1 100:1,2,21,25 101:1,4,8,10,19 102:1,3 103:1 104:1 105:1,15 106:1 107:1 108:1 109:1 110:1,9 111:1 112:1 113:1 114:1 115:1,2 116:1 117:1 118:1 119:1,18 120:1,7 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1,8,20 129:1,11,13,19,24 130:1 131:1 132:1 133:1 134:1,8 135:1 136:1,18 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 145:7 146:1 147:1 148:1,4 149:1,7,14 150:1,6 151:1,11 151:15,19,22 152:1,13 153:1,7 153:17 154:1,7,15 155:6,7 158:4,21 berman's 22:11 best 10:19 25:21 31:18 32:11 35:14 42:6 43:2 45:4 52:9,22 58:14 64:12 69:2 71:22 84:11 86:12 89:14 91:23 92:11,13	94:25 95:20 96:12 101:21 106:8 108:21 109:18 110:18 115:10,21 115:22 116:17 118:10 134:14 135:4 136:22 137:9 139:13 142:12 beyond 48:10 big 13:25 bit 61:9 62:15 75:19 77:23 78:2 94:11 100:6 124:15 144:19 bizarre 144:18 bleeds 49:25 blinds 121:17 blocked 72:23 blood 157:15 bonus 123:24 bookmark 40:11 boss 31:6 113:12 150:14 bottom 68:9 76:24 118:21,25 boy 15:7 143:3 breached 145:4 break 11:18,20,21 81:16 96:15,17 97:22 152:2 briefly 29:18 125:7 bring 65:13 bringing 114:23 brings 64:17 bristol 30:25 brittany 7:13 broad 14:11 broadly 37:22 71:13	brought 25:7 31:2 31:4 49:12 126:9 126:16 143:9 bucks 123:20 bummer 29:2 business 22:2 35:11,17 47:15 61:20 businesspersons 61:13
c			
caboodle 150:14 cal 111:9,11 calendar 16:11 california 17:3 30:9 65:4 114:8 call 33:6 43:13,23 44:9 65:9 89:25 92:17 97:12 101:12 108:15 111:10 112:25 116:11 125:4 126:23 127:4 131:13 141:16 142:2 143:22 147:20 called 9:10 31:25 35:8 94:13 111:4 136:5 139:17 144:8 calling 74:18 calls 108:18 109:4 111:11 143:14 147:15 capacities 1:8,9,10 5:24 6:2,4 capacity 104:12 caption 28:2 captioned 34:24 138:5			

cared 116:11 career 114:10 careful 20:20 29:15 31:13 37:18 47:14 50:24 51:21 139:23 case 2:14 8:17 12:8,11,16,21 13:11 23:13,25 36:22 38:23 39:9 53:7 61:12 106:17 112:13,15,17 123:17 140:20 149:21 158:3 cash 35:9 51:12 cause 106:6 caution 70:23 128:13 caveat 109:3 cell 5:9 cellular 5:8 centered 28:17 central 117:9 certain 35:10,12 47:15 50:13 123:13,17 146:24 certainly 13:21 15:25 32:9 50:6 80:2 98:5 99:6 114:8 119:3 147:2 certainty 50:5,11 51:3 certification 4:6 157:2 certify 157:7,13 chain 80:2 chambers 70:3 change 62:4,11 80:19 152:4 158:5 changes 37:13	characterize 58:19 61:24 chat 15:19 103:20 check 106:20 checking 148:4 chemical 1:6,7 5:20,22 7:11,22,23 8:8,11 9:4,23 21:25 22:22 23:5 23:22 24:8 34:8 34:22 35:7 36:2 45:15,22 110:24 113:10 152:18 children 13:22 15:11,13 16:14 choppy 60:15 61:25 christmas 78:24 chronological 144:20 circumstances 13:8 city 2:5 civil 1:22 6:7 claim 109:12 141:9 145:22 clarick 2:7 8:14 clarification 151:10 clarify 22:20 30:16 136:19 cleanup 24:10 clear 35:15 42:21 56:8 58:22 71:22 73:10 83:3 94:19 99:7 108:2 109:2 120:19 136:15 153:2 clearer 138:2 clearly 116:12	clerical 24:13,19 client 23:2,8 34:10 37:19 45:19,25 52:13,16 59:5,20 60:3,24 61:15 62:2 65:2,13 69:18 71:5 73:14 75:16 76:7 84:6 92:10 113:12 115:11,18 118:12 122:5,16 123:12 clients 8:4 61:22 62:8,9 108:12,13 122:16,20 123:5 clip 59:16 close 70:14 113:24 121:17 closely 98:17 coffee 44:14 collaborating 69:17,20 colleague 33:17 colleagues 7:13 115:17,20 136:25 colloquy 79:13 colombian 141:20 colwin 3:6 7:7,8 9:18 18:22 19:3 19:17 20:11,18,25 23:12 44:7 46:6 58:15 60:15 65:10 80:17,21 81:5 100:19 101:3 105:19 107:15,21 114:17,24 117:19 117:25 119:16 120:17 122:14 123:18 128:7,10 129:17,21,21 130:18 134:24 135:10 140:14	146:7,15 147:12 149:4,24 151:8,13 151:25 153:7,21 154:2 155:6 com 68:15 come 21:2 24:12 40:12 71:24 100:23 117:22 124:8 127:20 133:24,25 139:11 139:15 145:10 coming 60:20 152:23 commence 46:9 commission 158:25 communicate 40:14,18 75:13 116:20 communicated 38:5 84:10,15 118:24 147:5 communicating 82:24 83:9 communication 21:6 70:15 78:12 82:12 83:14 84:17 84:22 85:23 87:18 87:25 90:3 91:18 92:15 93:9,11 107:8,12,19 108:11 115:13 137:11 147:20 communications 23:2,9 33:25 37:19 45:19 46:2 47:23 48:7 50:2 82:10 90:9 94:21 95:8 107:25 108:9 108:25 147:16
--	--	--	---

[company - counsel]

Page 6

company 29:17 31:10 35:2 39:2 102:24 comparison 105:8 competency 104:16,19 complained 32:14 complaint 14:9,14 21:4 25:6,12 26:3 26:6,10,18,20,23 27:4,7,15 145:14 147:3 155:12 completed 54:22 57:6,8 95:16 132:10 completely 77:3 complicated 109:7 comply 118:10 component 130:15 components 130:11 comported 48:25 composites 24:8 152:18 composure 99:9 compromise 78:2 80:5 concern 101:20 109:9 concerning 111:19 124:3,19,25 126:7 126:15 132:8,22 132:24 133:20 139:7 concerns 53:6 55:13,21 58:24 94:2 concluded 153:24 154:3 concludes 154:6	conclusion 32:6 79:18 concrete 88:11 conduct 48:17 conducted 142:14 conducting 70:10 conference 64:19 65:9,19 71:7 112:8 114:13 conferences 114:10 confidential 22:13 23:2 45:19 129:7 148:18,20 149:3,9 149:18 confidentiality 149:20 confirm 54:9 96:17 138:19 confirmation 96:4 conglomerate 22:4 connected 46:11 connection 7:20 cons 109:20 conscientious 134:13 140:18 consequence 51:15,23 consider 13:19 85:19 consideration 47:2 considering 127:16 consistent 49:2 52:12 75:19 92:10 92:12 cont'd 3:2 contact 33:24 34:11 36:2 37:9 50:7 119:6 124:6 126:3 148:24	contemporaneou... 36:18 61:4 context 49:10 100:15 continue 5:13 24:2 continued 132:17 continuing 23:18 29:8 contract 35:5,14 35:24 46:12 56:8 77:5 contractual 60:18 conversation 28:7 28:14,17,23 30:17 33:5 40:25 41:25 42:9 65:20 66:2,6 66:21 78:16,21 79:2,16,25 96:9 97:25 98:5,8,9,21 99:13,17 100:11 113:25 119:3 120:2,4,9 125:13 125:17 132:21 133:4,5,19 139:2 143:10 147:6 conversations 5:7 27:12 28:8 33:21 41:10 42:3,14 43:17 46:8,10 49:8,17 50:14,16 89:3,19 91:21 98:11 118:6 120:11 122:25 126:14 127:8 conveyed 134:22 copied 68:19 86:11 151:21 copy 19:7 20:10 68:8 93:12 copying 82:14	corporation 1:7 5:22 7:22,24 8:8 8:12 21:25 22:22 23:5,22 34:9,22 35:7 45:15,22 110:25 113:10 correct 10:2,9,13 12:14,15 13:20 15:3,4,12 18:10,16 18:17 44:25 59:2 62:12 64:19 65:21 66:3,4 68:16,19,24 69:8 81:22 82:2,2 83:11,15 84:8 87:19,20 88:4 89:6,13,15 93:18 94:5 95:2 99:22 114:5 117:2 120:16 122:13 126:5 127:5 134:23 149:22 150:9 153:5,25 correctly 39:25 60:5 122:5 124:22 costa 1:8 2:8 3:3,9 5:25 7:11 8:15,24 8:24 9:22 27:18 counsel 1:23 4:4 5:18 6:21 9:3,21 15:2 18:18 19:8 19:19 21:18 31:3 31:5 33:10 34:2 36:15,21 37:25 38:11,18 39:5 47:3 49:4,12 51:25 52:7 70:7 73:12 75:17,20 77:19 78:19 91:19 96:20 102:18 103:8,15 104:5,10 104:11 105:10,11
---	--	--	--

[counsel - diminish]

Page 7

124:13 146:21 148:20 149:21 counselor 80:16 153:23 counsels 36:25 106:19 counter 79:10 82:24 83:5 countered 136:3 countering 91:12 counteroffer 91:10,14 98:16 counterproductive 88:20 counterproposal 85:7 86:8 country 2:4 couple 29:23 course 21:11 48:18 49:9 53:4 65:22 75:9 85:21 114:9 134:9 140:24 court 1:2 4:16 6:6 6:14 8:5 9:7 59:10 65:11 118:10 courtesy 19:7 47:16 48:6 71:2 75:15 courts 61:8,9 111:10 critical 10:11 cross 97:3 cultural 71:4 culture 47:15 cup 44:14 current 12:20 23:24 33:16 127:14 currently 12:7 24:6	cv 6:8 d d 155:2 d.c. 2:12 daily 133:15 dark 121:22 date 33:5 35:12 39:13 80:3 132:25 134:13 158:4 dated 78:22 83:15 84:4,19 91:8 dates 40:2 day 18:11 30:10 38:10,10 39:3,3 40:3,3,6,6 63:11 63:11 71:24 72:17 125:11,11,11,11 154:22 157:19 158:22 days 91:13 deadlines 35:14 deal 43:25 48:2 52:9 dealt 38:17 dear 85:3 december 1:13 5:4 78:22 83:20 91:9 157:19 158:4 decide 20:7 88:6 decision 17:2,8 114:3 def 53:24 54:7,8 56:25,25 57:3 63:18,19,25 64:2 67:6,13,21,21,23 67:24 72:12,14 73:14 74:19,24 75:7 76:3,3,10,11 80:14,14 81:24 87:5,11,14 90:19 90:23 92:24 93:10	95:6 155:14,16,18 155:19,20,22,23 155:24 156:2,4,5,6 156:8,9,10,12,14 default 105:23 defendant 5:18 8:25 9:3 defendants 1:10 22:15 27:25 defending 7:10 defense 8:5,9 9:21 defenses 8:3 deficient 138:21 definitely 61:11,13 definitive 85:21 definitively 85:16 127:4 142:25 delay 62:17 deliver 60:12 delivered 95:25 demand 25:12 120:15 122:2 133:12 134:6 135:16,17 136:9 136:20 137:2,7 138:8,9 139:8 142:22 144:5 146:3,12 147:8 155:13 demands 133:21 demeanor 43:16 49:7 depending 145:21 depends 122:15 deponent 8:18 19:2,12 20:3 97:13 151:23 deposition 1:12,16 4:6,13 5:12,17 6:9 10:8 14:6,17 26:4 45:12 81:12 158:4	depth 106:11 deputies 38:14 derisive 125:16 derivation 144:22 derive 117:2 derived 65:16,25 describe 36:12 37:14 116:2 described 15:22 110:20 describing 144:10 description 155:11 designate 117:17 148:17 designated 65:7 113:17 117:4,22 124:25 125:14 designating 149:12,15 designee 65:2,18 68:22 113:9 119:11 desperately 56:6 detail 44:2 109:24 143:12,25 detailed 31:19 109:19 details 24:16 104:7 129:10 devoted 140:19 diego 30:8 79:22 112:6,18 difference 118:18 different 16:17 36:17 88:16 111:9 111:10 129:25 difficult 46:7 48:9 61:5 107:23 121:2 dim 40:22 diminish 99:4
--	---	---	--

[dinner - english]

Page 8

dinner 16:2 30:11 111:25 141:19 diplomacy 43:13 direct 93:10 128:13 directing 85:24 direction 22:15 24:18 36:22 37:21 43:5 45:7 47:5 53:10 directions 46:20 directive 92:4 120:19 directives 118:21 directly 40:15,19 150:16 disagreement 139:7 discernment 134:14 disclose 29:6,11 disclosed 19:13 20:4,10 21:10 28:9 146:4 disclosure 148:22 149:9 discomfort 57:10 61:23 disconnect 60:7 61:16 discourteous 72:24 88:21 discourtesy 51:16 discovery 21:11 discreet 140:9 discretion 20:7 62:3 discuss 26:22,25 32:24 62:9 138:16 139:6 148:24	discussed 26:16,19 29:17 30:21 64:8 75:2 79:14 80:2 100:10 115:4 discussing 85:4 109:7 discussion 14:16 14:21 16:25 17:8 31:20 41:4 119:12 124:2 132:22 138:14 142:8,21 144:4 discussions 27:4 27:21 32:16 50:21 50:24 51:9 114:21 120:22 124:24 125:5 126:6 132:7 dismiss 8:10 displeased 120:23 disposition 71:2 dispute 46:13 138:19 disputes 12:22 district 1:2,3 6:5,6 59:13 111:9 114:7 document 18:4,14 19:22 20:23 55:17 58:17 59:10 63:15 64:4 83:13,22 90:16 93:23 102:12 documents 18:4 19:18 20:2 26:12 40:9 53:15 71:18 doing 67:4 68:25 115:10 120:21 dollar 138:9 dollars 51:20 donehower 2:17 8:16,17 15:3 22:10 24:15 37:16	45:6 46:19 47:21 50:19 51:8 53:9 57:14 101:8 128:6 donna 1:8 2:8 3:3 3:9 5:24 7:11 8:15 8:24 9:22 27:17 doubles 143:24 doubt 100:17 132:6 138:12 drafted 104:25 drive 16:19,20 52:18 driver 52:19 duly 9:11 157:9 e e 2:13 155:2,10 earlier 38:22 41:14 62:21 63:2 68:18 102:7 103:18 111:18 141:19 150:9 152:14 early 25:22 30:7 40:4 43:11 64:15 68:23 111:11 earned 123:25 editorial 77:16 effect 4:15 48:25 120:2 137:12 139:20 efforts 39:10 either 38:14 42:18 59:12 94:14 105:10 113:21 115:5 118:19 124:10 126:18 145:20 146:5 ele 145:8 elements 142:8 email 21:5 54:12 58:19 66:22 68:9	68:12,19 73:22 74:5 76:14 78:22 79:25 82:6,13,17 83:17 85:4,14 86:5,14 87:24 88:8,9 95:18 119:9 135:8 emails 33:22 48:5 58:23 66:19 75:25 131:20 132:14 employed 12:7,11 employee 37:4 employees 32:13 employment 13:9 38:16 encompass 67:10 ended 130:16 ene 63:7 65:8 72:17 77:10 111:6 111:7,13,15 112:7 112:25 113:2,5,7 113:19 114:7,23 115:25 116:19 117:2,6,18,22 118:16,24 119:7 119:13 120:6,14 120:16,24 124:10 124:11 125:2 126:9,17,24 127:2 127:17 132:10,12 132:18 135:24 137:14,17 138:3 150:12,17,24 151:4,12 energy 35:2 enes 112:16 114:4 151:9 engaged 104:23 engagement 10:8 english 109:25
---	--	--	---

[enn - first]

Page 9

enn 111:13 ensure 76:7 entailed 89:25 entered 34:22 entirely 107:24 119:22 entirety 54:12 entities 7:19 25:8 36:17 entitled 1:17 entity 28:6 37:4,4 envelope 19:5 64:6 equal 91:11 equanimity 48:7 71:2 errata 158:2 esq 2:5,9,13,17 3:6 3:6 essence 34:25 essentially 43:21 142:18 et 28:11 ethical 105:24 ethics 105:17 106:6 142:14 145:5,8 evaluation 68:23 111:12 evasive 35:21 evening 89:9 events 11:3 29:18 38:25 133:15 138:21 everybody 68:24 118:9 evidence 19:15 56:11 91:5 evidently 138:20 exact 71:12 exactly 71:17 83:24 117:3	examination 9:17 97:3 102:2 155:5 examined 9:13 example 43:11 exceptionally 35:21 exchange 96:10 exchanges 95:19 excuse 80:15 110:7 131:5 exerted 52:17 exh 155:12,14,16 155:18,20,22,24 156:2,4,6,8,9,10 156:12,14 exhausted 112:3 exhibit 18:23 19:21 20:8 21:2,4 21:5,12 25:2,10,25 26:7 53:20,23 54:4,5,7,14 56:15 56:17,24 57:2,7,13 63:14,17,24 64:5 64:10 66:24 67:6 67:8,9,10,11,12,15 67:20,22 68:4,6 72:8,9,11,13 73:21 74:16,19,23 76:2,9 76:18 80:8,14 81:19,23 82:7,25 83:2 86:18,19,20 86:22,25 87:4,13 90:15,22 91:3 92:20,23 95:3,5 155:11 exhibits 18:8,19 18:21 20:13 21:7 21:20 24:23 131:15 exist 27:3 127:11	existed 27:3 existing 27:15 exists 66:10 expectations 60:8 expensive 53:2 experience 22:2 expires 158:25 explain 109:23 explaining 115:24 explicit 60:17 explicitly 38:5 express 113:6 121:15 137:14 141:5 147:9 expressed 57:10 99:16 113:14 expressing 141:7 expressly 8:2 122:11 extensively 152:17 extent 22:17 46:23 58:11 88:22 extra 20:24 extremely 150:15 f face 35:16 56:7 147:21,21,23,23 fact 17:10 37:2 75:17 94:10 120:10 124:8 facts 103:2 failed 35:10,13 fair 36:10 105:16 136:18 faith 35:18 60:21 77:25 115:21 118:10 familiar 47:17 far 33:23 60:14 128:12	faulty 92:12 february 38:24 112:11 fecklessly 56:6 federal 1:21 30:9 61:8 91:5 feedback 74:2 75:3 feel 61:9 130:21 133:13 139:25 feeling 59:19 felt 32:18 116:15 fifth 2:8 figure 144:13,23 file 109:10 filed 6:4 filing 4:5 fill 44:14 final 78:5 129:15 financially 6:20 fine 138:22 firm 6:12,15 7:17 13:9 22:8 33:15 43:22 49:11 68:13 127:14,15,19 firmly 88:7 first 7:21 9:10 15:5 17:19 21:22 22:5,7 25:11,13 26:2,6,7 28:18 30:3,13,19 46:9 64:4 65:6 70:6 82:19 86:20 102:14 103:5 111:20 112:25 113:5,7 115:25 116:19 118:24 124:11 126:24 127:17 131:2,7,16 132:10,12,18 133:2 143:17
--	---	---	--

148:24 150:12,17 151:12 153:13 155:12 fischman 1:5 5:19 8:21 13:16 14:6 14:17,21 15:6,21 16:6,13,25 17:6,12 17:16,20 25:7 26:17,20 27:5,13 28:9 29:7 30:20 31:8,24 32:17,24 33:19,22 34:14,15 36:3,5,7 37:3 39:2 39:4 40:7,17 41:5 41:7,16 42:5,24 44:6,8,23 46:10,21 47:8,14 49:17 50:3,7,15 55:6 60:11 64:11 65:5 65:20 66:2,6 73:16 74:2 75:3 75:11 77:8 78:10 79:5,18 83:8,22 84:11,23 85:15,25 87:18 90:10 91:21 91:22 92:5,13 94:15 95:9,24 96:9 101:7 102:5 102:14,17,23 103:5,25 106:5 107:9,13 108:2 110:5,12 115:6 119:13 125:9 126:3,7,19 131:4 132:2,8,16,21 133:10,20 134:4 134:22 137:4 138:14 139:6,12 139:22 140:11 141:16 142:13 144:6 145:2 146:6	147:17 152:15 153:4 158:3 fischman's 36:13 73:22 96:6 99:22 104:15,19 106:22 108:11 141:22 fit 122:19 five 15:9,24 81:2 96:15,17 fixation 115:2 fixed 113:7,15,17 flag 10:11 flipping 17:22 floor 2:8 3:5 focus 24:25 25:5 106:3 focused 37:2 focusing 41:2 folks 35:17 42:15 43:23 55:24 60:25 109:24 114:2 115:5,6 follow 123:8 following 42:23 99:15 follows 9:14 force 4:15 51:18 forgive 128:24 forgotten 59:12 form 4:9 53:17 55:9 57:19 59:3 60:13 94:7 100:3 104:15 105:17 106:10 107:11 109:14 114:19 formal 145:24 formalities 99:3 formally 34:24 formed 105:20 117:7	former 68:13 forth 38:9 64:10 70:9,24 94:2 108:7 151:5 157:9 forward 82:4,8 forwarded 72:21 73:4 83:22 forwarding 77:7 83:17 fought 56:5 found 76:21 four 12:12 13:7 15:24 63:17 91:10 119:23,24 120:9 fourth 17:23 frame 39:14 59:22 59:23 62:20,23,25 63:9,10 framing 93:24 friction 140:22 friend 13:19 14:3 friendly 13:21 15:18 frivolous 60:19 front 25:25 79:10 145:14 fruitful 72:19 frustrated 72:5 frustrating 31:17 59:19 frustration 60:2 fujiwara 93:13,14 full 12:2 31:5 62:3 78:4 90:6 fully 117:6 function 38:3,8 functioned 39:5 funny 94:12 further 4:8,12 76:23 84:17 85:19 100:20,23 112:8	129:10 148:9 151:23 153:16,18 153:19 157:13 future 97:13 g g 7:17 gaps 107:19 garden 2:5 gauging 85:13 gc 103:6 gcs 105:23 general 9:3 27:16 28:9 31:3,5 34:19 36:25 37:25 38:18 39:5 43:18 47:5 51:5 102:17 103:8 103:15 104:10,11 105:10,11 106:18 124:12 145:11 generality 27:23 generally 99:2 104:14 genomatica 18:16 21:21 23:10,23 24:11,21 25:5 30:5,15 32:6 33:7 33:11 34:4,11,20 34:25 35:4,6,10,13 35:20,21 36:14 37:7,10,12 39:15 39:20 41:3,5,6,11 42:2,10 43:6 44:24 46:3,22 48:18 49:12,19 51:7,19,24 52:3,7 52:14 53:4 55:5 55:14,19 56:2 57:12 59:2 60:9 61:25 62:15 63:3 75:6 77:19 85:12 86:2 88:3 89:12
--	--	---	---

89:22 91:8,19 96:2 98:3,13 103:24,25 104:8 109:9 110:3,11 112:23 127:21 130:25 131:6 148:17 152:16 153:5 genomatica's 56:5 56:10 73:12 77:15 gentlemen 112:4 george 2:13 7:16 22:21 getting 18:10 give 13:7 53:10 54:16 77:22 93:2 93:7 106:5 134:18 137:25 143:11 given 20:20 47:8 59:20 84:7 92:4 101:13 115:18 154:6 157:11 giving 69:18 glacial 61:9 glancing 20:23 go 5:15 10:6 21:21 27:8 39:24 40:7,8 44:14 59:16 60:14 65:7 71:14 80:21 81:5 82:4 87:3 97:16 121:13,25 122:18 128:14,15 130:23 148:9 goal 52:14 goes 148:11 going 5:3 10:5 19:20,21 25:23 26:3 27:10 33:6 36:8 39:17 44:13 45:10,11 46:25 53:19 56:15,16	57:18 66:25 68:3 68:22 70:9 73:10 74:13 75:24 76:13 78:8 80:8 83:18 83:25 86:17 87:7 90:13 93:9 95:22 96:14,21 101:20 104:6 110:8,9 111:25 117:14 128:10 129:17 135:23 136:11 146:18 150:4,17 150:23 152:4 good 5:2 7:7 9:19 31:6 35:18 39:10 59:15 60:21 77:25 105:4 115:21 123:2 140:18 gordon 3:3 7:9 gotten 29:4 grace 33:17 granted 121:15 grateful 143:8 great 60:24 61:14 81:17 97:6 greater 143:25 green 35:2 73:24 gritty 29:4 grounds 136:12 group 14:3 53:21 56:17,20 63:22 72:11 76:16 80:9 90:14,19 92:22 gueron 2:7,9 8:13 8:13,14 81:11 guess 16:8 29:18 32:5 43:23 55:16 62:19 63:8 64:20 66:18 72:16 73:4 77:9 99:2 116:12	guidance 43:21 44:4 69:19,22,23 73:3 75:12,21 h h 7:17 155:10 half 68:9 78:10 79:8,20 hand 35:6,8 87:3 106:19 157:19 handle 45:5 handled 55:6,15 55:23 62:5 75:6 handling 24:6 53:6 57:11 58:25 hands 106:18 122:17 happen 109:12 143:16 happened 31:22 64:16 100:8 102:20 119:4 happening 32:3 61:24 happenstance 62:18 happy 22:19 hard 54:23 69:15 105:14 109:22 115:15 120:10 hardcopies 54:3 hardcopy 19:4 54:11 56:21 80:11 hats 40:21 head 15:8 72:3 hear 29:3 93:20 139:18 hearts 115:10 heavily 76:6 hebrew 15:13 16:15 103:19	held 1:18 6:9 73:2 104:21 109:14 help 44:12 66:20 72:8 hereto 4:5 hereunto 157:18 hesitant 27:6 hey 18:18 124:13 134:16 high 13:25,25 27:22 31:11,21 34:21 48:12,22 51:11,12 104:21 109:23 145:17,18 150:15 higher 120:15 138:9 146:3,13 147:11 highest 38:2 highly 33:4 hired 17:16 25:4 134:16 hit 60:15 61:10 hitting 61:25 hmm 123:4 131:11 132:13 hold 43:22 76:15 85:15 95:13,13 holding 49:11 holdings 1:6,7 5:20,22 7:12,24 8:8,11 9:4,23 27:17 36:2 home 16:21 64:7 honored 143:7 hope 52:20,24 143:6 hoped 52:17 55:25 62:14 69:22 hotel 112:19
---	--	---	--

[house - j]

Page 12

house 16:20 36:15 36:21,24,24 38:11 110:17 141:22 hundred 50:12 husband 16:3,6,7	incorrect 72:4 incorrectly 39:22 incredibly 98:25 independent 93:21 124:18 132:4 145:16 independently 47:18 individual 1:8,8,9 5:23,25 6:3 20:14 150:8 individuals 41:10 42:9 50:8 55:21 108:19 109:2 119:7 ine 111:5 ineffectively 56:7 inform 142:2 145:3 information 22:13 50:18 64:9 96:2 125:21 informed 44:8 64:21 138:15 initial 52:2 65:24 125:3 initially 36:5 initiating 46:14 insist 148:23 insofar 58:5 installments 86:9 91:11 instance 65:6 109:8 instantly 46:9 instruct 22:23 45:16 136:8,20,25 instructed 46:18 137:6 instruction 48:8 123:10	instructions 44:5 44:23 45:3 47:8 47:12 48:16,23 69:10 70:16,21 84:7 88:2 89:10 122:21 integrity 75:9 intellectual 109:13 intend 96:19 interact 102:22 103:13 interacted 106:12 107:20 interacting 102:15 126:2 interaction 101:6 106:5 107:14 interactions 32:12 116:2,4,6,13 153:4 interested 6:21 141:13 145:15 147:4 157:16 interests 47:7 interfaced 33:18 interfere 5:11 interference 5:8 interim 90:17 interpret 60:5 interrupt 80:19 introduce 18:22 19:21 20:8 introduced 19:15 19:20 20:6 introductory 9:20 involve 139:24 involved 25:8 33:14 39:9,20 40:3 47:6 58:10 63:3,11 150:11 involvement 37:11	ip 130:9 issue 14:9 21:5 25:14 55:5 62:3 104:4 117:8 141:10 144:9 issued 9:25 153:10 issues 24:20 46:16 55:4 items 24:10
i			j
idea 72:3 93:15 127:12 identification 25:11 53:24 54:5 57:3 63:25 67:13 67:23 72:14 74:24 76:10,18 81:24 87:5,14 90:23 92:24 95:6 identified 21:13 39:18 41:8 99:20 123:11 identify 21:9 76:14 91:2 identity 20:14 illuminate 144:20 imagine 61:5 70:2 113:21 immediately 60:21 60:22 78:5 impair 120:21 implicate 22:12 implicitly 122:10 important 22:3 47:19,25 140:25 impossible 138:11 impression 104:18 105:17,21 improper 140:2 improve 105:7 include 42:16 including 8:4 99:25 incorporated 5:21			j 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1

100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 january 39:16 84:4,19 85:10 86:6 87:23 89:9 89:20,22 90:8 91:17 93:17 94:22 94:23 97:23 98:3 98:10,12,23 99:20 131:2,8,16 132:3 132:20 133:3 japan 22:4 35:17 42:15 43:24 47:16 60:25 88:11 89:25 94:13 112:4 114:2 115:5,6 116:7,9,9 116:21 118:6,7,15 118:21 119:2,7 124:7,9 126:24,25 138:3 145:19 japanese 71:5 108:22 jen 34:12,13 72:21 73:22 91:10 92:17	106:15 109:18 116:10 125:12 131:7 133:4 134:10 140:18 143:10 144:8 145:19 146:5 jennifer 1:5 5:19 8:21 13:14,16 15:6,15 16:3,5 25:16 29:17 34:14 34:15 37:23 38:9 38:17 42:4,14 56:13 73:4 74:12 82:14 83:17 126:2 130:24 131:3,4,21 jennifer's 153:3 jeremy 1:19 6:15 9:12 157:5,23 jmf 6:8 john 1:9 6:2 join 13:10 44:12 146:19 joined 38:23 112:14 joining 146:20 joint 34:24 josh 8:18 37:17 85:5,18 86:10 94:10 128:14 140:2 joshua 1:17 2:15 5:17 9:9 12:3 154:7,15 158:4,21 joshua.berman 68:15 judge 30:10 59:13 62:18 70:8 judges 59:17 judgment 11:6 jump 22:11 37:17 128:13	jurisdiction 8:7 jury 25:12 155:13 k kane 2:3 keeping 71:3 ken 93:13,13 kicked 37:23 kind 24:10 37:23 48:5 49:6 62:11 70:8 77:25 85:19 88:18,23 89:2 109:19 112:9 122:18 123:10 124:16 140:5 kit 150:14 knew 29:10 38:6 55:24 59:5 124:5 knock 144:18 know 9:20 11:17 11:19 13:16,24,25 14:3 15:18 17:6 21:3,24 23:20 26:24 27:25 28:25 29:24 30:2 31:16 31:22 32:2,3,4 33:23 34:23 36:19 36:24 38:6,13 39:6 40:8,20,21 43:9 51:10,25 52:10 54:2,21 57:5 59:18,21 66:13,16,20 70:12 71:3,16 72:2 75:21 79:23,24 80:11 82:16 84:14 88:14,22 90:20 93:13 100:20 101:11 102:10 103:17 107:16 109:22 110:2 112:10 113:13,16	114:3 115:12,14 115:15,16,17 116:14 117:11 118:4,18 119:4 120:19,25 122:24 124:13 125:15,24 127:10,23 128:4,7 129:2 130:3,12,14 130:19 134:11,16 135:3,4,16,18,23 136:6 137:22 138:4,7,22,23 140:8,19,25 141:2 143:3,15 144:8,12 145:11,23 146:2 146:11,22 148:10 151:16 153:11 knowing 38:17 115:3 knowledge 56:12 93:22 106:11,15 106:25 124:18 140:16,21 141:12 144:22 145:16 153:2 known 12:4 91:18 knows 22:18 143:3 l labor 18:11 lack 72:5 language 73:6 109:17,25 largely 143:7 late 17:24 105:2 lauren 3:6 law 7:8,17 lawsuit 14:13 24:12 25:14 46:11 lawyer 43:8 115:18
---	--	---	--

lawyers 78:18 lay 109:20 layer 109:16 lead 63:9 140:23 leading 18:11 119:13 151:4 leapt 62:21 learn 25:13 learned 21:23 68:21 learning 140:11 leave 58:20 122:18 led 92:18 lee 16:3 141:20 left 81:11 140:5 legal 12:2,5 28:3 28:24 38:3 52:11 56:14 58:8,10 104:7 106:11,15 106:24 length 128:4 level 27:22 31:11 31:21 34:21 46:17 48:12,22 49:13 105:12 106:24 109:23 117:23 145:17,18 license 79:11 light 73:24 121:25 limit 50:25 limited 24:19 47:22 50:19 97:3 153:3 limiting 48:21 51:8 123:9 line 118:22,25 158:5 lines 105:4 lisa 16:2,10 141:20 literally 18:7 26:13	litigant 56:4 60:17 137:20 138:5,5 litigation 12:22 18:16 21:22 29:21 30:15 33:7,14 34:4,11,20 36:8,14 37:7,12,24 38:7,9 38:15 39:21 41:6 42:2,11 43:6 44:25 45:5 46:5 46:14 47:6 48:19 49:20 52:11,15,18 52:25 53:5 55:14 55:20,22 57:12 59:2 60:9,10 61:7 62:5,15 63:4 75:5 75:15,20 77:17 89:12,23 91:20 100:16 104:2 105:24 106:19 110:21 117:10 litigator 61:18 litigators 36:24 little 54:23 62:15 77:23 85:19 94:9 100:6 124:15 128:25 135:22 144:19 live 16:12,16,17 115:12 living 100:15 llc 158:2 llp 2:3,7,11,14 3:3 8:17 12:18 loading 63:15 located 6:10 logic 99:15 logical 98:20 144:25 long 12:10 13:6 57:16 67:15	longtime 62:8 look 16:9,11 25:24 56:20 63:14,17 66:24 67:9 68:4 71:16 72:9 73:11 74:17 75:23,24 78:9 79:4 80:8,10 81:18 82:18 84:2 86:18 87:9 90:12 90:15,21 92:20 93:8 95:3,23 129:4 130:23 looked 36:16 82:7 132:14 looking 18:3,5,15 18:19 82:19 83:21 93:22 lost 128:19,25 lot 61:20 105:3 lots 69:22 low 52:4 luck 24:9	marco 3:10 6:12 mark 149:2 marked 21:9,10 25:10 53:23 57:2 63:24 67:12,22 72:13 74:23 76:9 81:23 87:4,13 90:22 92:23 95:5 marriage 157:15 masaru 34:17 material 109:11 materialize 56:3 materials 18:25 19:12 math 15:8 matt 20:18 21:3 100:21 101:3 matter 5:19 7:21 8:6 23:23 29:20 29:21 30:5 46:23 50:9 52:20 55:13 61:3 71:12 78:4 86:2 88:4 98:13 99:9 104:2 110:4 110:6,11,17,23 111:3,17,20 112:5 119:15 122:9 126:4 127:21 130:3,25 131:7 137:5 150:19 152:18 153:5 157:17 matters 17:17 24:5,7 29:3,14 31:21 38:16 61:22 99:8 103:22 104:8 106:12 152:15 matthew 2:5 8:19 20:16 57:23 96:23 148:6 149:5
		m	
		m&a 38:15 magic 51:18 magistrate 30:10 43:13 59:14 70:3 main 28:22 maintain 48:6 70:25 maintained 76:8 99:9 maintaining 14:12 making 48:25 99:8 118:14 138:8 managing 36:7 manner 48:17 62:4 75:5 110:21 mansukhani 3:3 marching 88:24 134:10	

[mca - necessarily]

Page 15

mca 41:12 mcc 36:8 40:15 41:12,13 42:4,10 42:18,19,22 43:11 47:7 49:14,18 50:3,8,16 55:22,24 59:5 60:8 62:3 65:6 84:8,23 85:23 87:25 89:11 89:19 93:12,18,25 94:9,22 96:4 109:14 113:17 117:5 148:16 mcc's 24:17 52:14 mcha 31:4 37:10 42:24 102:19 mcha's 146:21 mchc 40:19,22 mean 21:24 34:13 42:13 43:7 57:22 68:17 78:18 88:12 99:3,4,6 100:4 106:14 107:24 108:13 119:10 120:18 124:5 125:7 132:11 134:8 140:6 143:2 144:14 145:13 151:3 means 117:17 mecabe 3:6 mechanics 121:9 123:11 media 5:15 80:20 81:8,14 152:4,5,10 154:8 mediation 30:8,12 40:4 43:12 59:17 64:15 65:8,11 66:8 69:6,13 70:18 111:21	114:13 mediations 114:9 122:23 medication 11:14 meet 15:5 30:3 35:10,13 members 94:9 memory 39:12 70:5 86:12 88:16 mentioned 15:10 29:22 37:5 mentioning 131:21 mercedes 3:6 7:8 129:21 merely 93:22 message 73:17 met 15:11 30:14 30:19 method 92:7 methodology 123:7 microphones 5:5 5:10 middle 120:24 143:6 miles 61:6 milestones 35:12 million 77:6,24 91:12 96:3 98:2 98:16,22 99:19 119:14 120:5 121:4 123:20 130:5,16,20 133:12,21 134:21 135:15 136:9 138:8 139:9 142:22 144:5,13 146:3,12 147:8 minami 34:16 53:5 57:9 68:20	83:9,18 108:21 109:21 137:18 mind 62:21 mine 100:13 minimizing 52:10 minute 16:19,20 80:24 96:15,17 152:2 minutes 81:2 misapprehends 115:7 miscommunicati... 145:19 misconduct 56:9 misleading 28:16 misremembering 149:23 missing 74:8 mitsubishi 1:6,7 2:11 5:20,21 7:11 7:22,23 8:7,11 9:4 9:23 17:17 21:23 21:25 22:9,22 23:4,19,22 24:3,8 27:17 28:3,5,11 29:9,16 32:13,19 34:8,22 35:3,7,16 36:2 40:25 45:14 45:21 49:3 110:6 110:24 113:9 136:7,15,17 152:18 158:3 mitsubishi's 35:9 35:20,22 mm 123:4 131:11 132:13 modulated 139:18 moment 23:17 24:25 25:6 26:5 53:22 54:4 56:18 63:16 69:11,21,21	70:14 76:15 82:21 85:2 90:21 93:8 96:15 100:4,20 144:24 momentarily 44:11 moments 37:5 monetary 130:15 money 35:3,20,23 78:3 month 102:7,9,11 monthly 15:14 months 18:11 24:13 35:18 85:18 86:9 88:15 106:21 144:17 morning 5:3 7:7 9:19 15:17 motion 8:10 104:25 105:6 move 13:13 63:3 moved 112:13,17 moving 59:15 110:3 multinational 22:3 multiple 28:8 myers 31:2
			n
			n 7:17,17 155:2 name 6:11 7:15 12:2,5 29:23 158:3,4 named 150:9 narrow 99:13 nature 20:24 28:10 32:10 34:20 115:7 145:12 near 16:12 nearly 12:12 necessarily 120:18

[necessary - okay]

Page 16

necessary 100:24 101:22,25 116:20 need 11:18 44:15 80:19 96:15 101:23 121:17,24 151:25 needed 125:22 negotiate 122:19 negotiating 43:15 48:2 115:9 negotiations 51:14 51:22 70:10 neighborhoods 16:17 neutral 30:7 40:4 43:12 64:15 68:23 111:11,20 never 29:4 31:19 94:12 134:15 new 1:3,21 2:5,9,9 2:16,16 3:5,5 6:6 6:11,13,16 9:13 17:2,9 78:25 103:7 154:9 157:6 158:2 news 61:14 nick 27:18 31:4 37:24 38:6,12,17 39:2 40:3 41:22 42:17 43:7,15 44:3 63:8,10 64:14 65:14 69:16 69:17,19,22 70:11 73:5 75:12,22 79:11,21 80:2 85:5,18 98:24 99:6,25 102:18 106:15 111:25 113:8,9,14,18,24 115:8,15,18 116:4 116:10,13 117:2,4	117:12,13 119:11 120:23 125:14,20 126:23 133:6,11 138:16 139:17,22 140:6 146:5 150:23 151:2 nick's 37:11 43:20 43:22 74:11 nicolas 1:7 3:4,10 5:23 7:10 9:2,22 nicole 2:9 8:13 night 105:2 109:5 109:5 nitty 29:4 noise 145:22 nonmonetary 130:11 nonparty 101:11 nonstarters 52:5 normally 114:12 117:15 norms 71:4 75:15 notary 1:20 4:14 9:11 154:25 157:5 158:24 note 5:5 18:2 19:25 47:14 53:16 54:6 55:8 56:23 67:5,19 76:5 89:2 97:11 noted 154:11 notes 148:5,7 noticing 7:5 notified 64:13 november 38:20 39:13,18 62:20 64:18 65:18 66:7 69:5,14 70:19 71:25 111:24 132:12 151:13	number 6:7 31:16 41:16 51:11 61:22 68:5 71:13 81:14 88:25 103:22 108:17 115:4,16 118:22 120:16 139:8 144:19 152:6,10 154:7 numerous 82:15 o oath 6:18 37:6 94:20 object 57:19 59:3 60:13 100:2 136:12 objection 53:17 55:9 94:6 105:19 107:15,21 114:17 114:24 117:19,25 120:17 122:14 123:18 129:14,18 129:19 130:18 134:24 135:10 140:14 146:7,15 146:19 147:12 149:6,15 151:8 objections 4:9 7:2 146:20 objective 52:9 objectives 46:13 49:15 obligation 60:18 obliging 153:9 observe 106:23 107:18 108:11,24 observed 141:14 observing 99:2,5 obtain 35:19 43:10 112:21 115:11 116:16	obviously 37:13 46:7 51:17 52:2 61:19 69:17 78:23 82:11 92:17 98:17 99:5 116:9 145:24 148:12 150:7 occasion 42:22 occasioned 62:17 occasions 41:16 occur 100:11 occurred 49:22 103:9 offer 13:10,12 39:15 43:18 49:13 56:2 77:15,22 80:4 85:5,12 86:2 88:3 89:12,21 90:8 91:7,16 92:5 93:16,20 94:3,4,11 94:23 96:3 98:2 98:11,23 99:19,21 112:22 offered 91:10 offering 78:13 offers 52:2,8 77:3 123:21 office 9:25 138:16 offices 7:9 oh 15:7 31:22 74:21 77:8 83:16 90:11 143:3 okay 11:17 19:10 19:24 22:7 24:22 25:23 26:15 29:22 31:7 32:7 33:6,8 40:13 48:14 54:9 54:16,25 56:22 63:12,21 64:8 65:16 67:2,3,18,25 72:16 74:11,22 76:4 79:4 80:7
--	--	---	--

[okay - period]

Page 17

82:18,21 84:16 86:23 87:12,17 90:4,12 91:2 92:19 93:2,6,7 95:11,17 97:6 100:18 102:13,22 103:21 104:6,8,22 105:16 106:4,23 107:5,8,18 108:5 108:24 111:16 112:24 113:4 114:20 117:15,21 120:3 121:22 122:22 123:9,23 124:17 125:14,23 127:13 129:6,9,13 130:7 131:25 133:10 134:3,20 135:2,6,21 136:24 137:6,13 138:7,13 139:11,15 140:10 141:13,15 142:16 142:20 143:13,19 144:3 145:2 146:2 146:11 147:7,24 150:21 151:18 old 2:4 oliva 1:7 3:4 5:23 7:10 9:2,2,22 27:18 29:25 30:4 30:6,14,19,21 31:7 31:20,25 32:14 36:4 37:6 39:19 41:8 42:12,16,25 43:4 48:16,24 49:7,14 62:25 64:11,22 65:7,14 65:17,23 68:21 69:6,10 70:17 75:4,8 77:8 79:6 79:17 93:12 94:14	95:9,23 96:11 97:25 98:14,18,22 99:18 103:7 110:5 110:14 112:21 114:21 115:5 118:20 120:4 124:3,6 126:18 132:23 134:5,12 136:19 137:4 139:7 142:4 146:5 147:17 oliva's 29:23 32:25 66:7 73:15,18,20 74:3 79:5 138:16 olivia 3:10 once 16:22 24:12 28:13 45:13 143:24 ongoing 24:20 29:7,14 61:2 104:3 115:13 opened 20:19 opine 107:4 opinion 104:15 106:10 107:11 140:18 141:5,7 opponent 72:25 opportunity 81:18 101:15 104:9 108:10 opposing 34:2 49:4 70:6 75:17 91:19 options 83:4,11 order 88:24 143:15 149:21 150:3 ordered 62:10 65:11 150:3 orders 134:11	ordinary 134:9 organization's 38:3 orient 39:11 original 59:13 originated 117:11 outcome 6:21 41:21 43:10 71:6 71:16,20,24 157:16 outside 15:21 33:9 41:4 42:11 104:4 117:9 141:3,4 owed 77:6,24 owned 109:14 p p.m. 81:16 86:6 87:24 89:20 97:18 97:22 152:7,12 154:5,11 package 76:2 87:11 packet 26:12 53:14 page 68:6,10 74:9 82:5 86:20 155:5 155:11 158:5 paid 35:3 91:12 parent 15:15 park 3:4 parlance 111:9 part 51:16 56:10 62:23 125:18 participant 106:17 participate 44:9 113:19 147:14 participating 64:14 particular 18:4 30:6 39:9 73:17 84:14 100:14	104:24 108:19 109:13 particularly 112:3 particulars 10:6 26:16,19 parties 4:5 5:14 35:5 157:14 partner 12:13,20 12:25 23:25 34:3 34:5 partnership 12:24 parts 10:12 67:7 party 6:19 65:12 65:14 110:22 114:14 122:8 party's 35:23 passing 28:23 pause 44:11 pay 51:19 77:23 payable 78:5 86:8 payment 35:9 127:25 129:3 payments 85:17 128:3 pendency 11:22 41:6 42:2 43:6 49:19 pending 8:10 people 58:10 116:20 126:20 137:25 143:5 people's 100:12 perceived 51:15 percent 50:13 perfect 21:16 perfectly 144:25 period 15:23 17:3 76:25 78:17 85:17 127:17,25 128:5 132:15
---	---	--	---

[permitted - protecting]

Page 18

permitted 22:16	53:10,16 54:17	133:8,15 137:8	96:3 103:14 114:4
person 30:19	60:6 82:21 102:10	138:18 143:8	126:24 127:14,19
65:15 113:19	119:17,19 128:21	144:7,9 146:24	147:7 149:8
117:21 125:10	149:4	151:20	private 5:7
134:16	plus 80:4 147:3	potential 48:2	privilege 29:15
personal 8:6	point 26:21 32:19	potentially 46:14	46:16 73:14 76:7
personally 56:13	33:4,24 37:8 52:6	practice 118:3	84:6 91:7
perspective	53:3 55:11,19	practicing 12:17	privileged 22:12
117:13	97:13 100:14	preceptory 141:14	privy 118:7
pertaining 24:11	104:24 112:14	precise 88:24	probably 16:19
27:13 41:11 42:10	117:12 124:9	116:15 118:5	17:24 28:15 72:8
44:24 73:16 79:17	125:25 141:18	133:14	118:2 127:9 129:8
87:19 96:2 97:25	143:2 146:24	preparation 14:25	142:5,5
98:11,13 99:18	148:9	30:11	problem 58:2,4,12
pertains 91:6	populate 24:24	presence 42:4,11	130:2
peter 7:14	26:3 56:16 72:10	141:3,4	procedure 1:22
phone 40:17 54:19	74:13 76:16 87:7	present 3:9 6:22	proceed 9:16
94:15 108:18	90:13 92:21	7:10 9:24 22:24	114:3
113:25 116:11	populated 80:9	23:7,16 42:25	proceeding 7:3
126:22 143:14	populating 67:11	45:17,24 46:4	11:10 25:9 95:12
148:3	portchester	96:20	process 10:12 61:7
phones 5:9 115:13	141:21	presentation 70:5	64:23 82:17 84:15
phrasing 39:21,25	portion 35:9	70:7,18	product 23:3
physically 26:13	119:20 128:22	preserving 73:13	45:20
138:6	149:16	pressure 52:17	professional 1:8,9
pick 5:6 113:24	portions 54:24	pretty 120:22	1:9 5:24 6:2,4
pike 152:24	149:10	125:15,19 135:24	104:11 105:13
place 1:18 5:9,14	position 12:20	prevailing 115:11	professionally
39:4 94:17 113:23	31:14 49:10 56:5	previewed 104:2	103:16
124:15 141:3,4	80:6 106:25 143:4	152:22	proffers 60:10
150:5	positions 60:19	previous 82:7	programs 65:12
plaintiff 1:5 2:4	positive 142:6	previously 21:8	progress 120:21
8:20 20:17 96:25	possessed 120:14	146:4,14	property 109:13
110:22 121:10,11	possession 117:23	primary 33:9,24	proposal 79:6
121:14 122:7	possible 51:13	34:3 37:9 126:3	88:18
plate 38:13 153:12	59:23 61:4 70:13	primavera 7:13	proposed 73:17
play 62:13	85:8 98:24 99:6	prior 12:16,23	78:14 79:19
played 143:23	100:12 101:17	23:22 26:10,21	144:16
plaza 3:4	102:25 103:2,9	29:18 57:12 58:22	pros 109:19
please 5:5,8 7:3	118:23 119:22	73:8,19 82:25	protecting 47:7
9:7 11:19 39:22	126:10,21,23	94:4 95:12,19	

[protective - record]

Page 19

protective 150:3	23:7 25:4 27:10	read 26:14,18 27:8	receive 20:9 44:6
protocol 113:22	29:19 45:17,24	54:25 63:20 67:2	48:15 69:9 70:16
protocols 99:5	46:24 47:2 53:12	67:16,25 74:20,22	73:25
150:5,7	53:18 55:10 57:15	87:16 90:25 93:3	received 10:5
protractive 52:25	57:19 58:5,6,13	95:14 119:18,21	18:21 44:22 55:16
prove 134:17	66:14 69:15 100:3	128:20,23	69:21,23 75:4
provide 43:4 44:3	105:14 106:6	reading 26:23	108:2 118:20
109:18	108:6 109:11	58:16 74:15	receiving 48:23
provided 18:20,25	110:10 114:19	reads 94:9	recess 44:18 81:10
19:4,12,18 20:3	119:17 121:21	ready 85:6	97:19 152:8
provides 123:13	124:16,22 128:19	realize 111:22	recollect 11:2
providing 124:3	134:19 135:5	really 27:6 28:6	recollection 10:20
provision 58:9	146:9,17	39:3 43:8 59:6,7	25:21 31:19 32:11
119:6	questioned 134:10	99:7 106:2 107:3	35:15 40:10 42:7
provisions 118:13	questions 22:25	109:6 122:15,16	43:3,19 45:4
proviso 121:6	23:8 45:18,25	122:18 130:22	52:23 58:15 59:11
provocative 48:4	48:11 96:19,21	136:3 146:10	62:24 64:13 66:11
49:5 70:25	97:3 100:21,24	152:20 153:3	66:18 71:18,23
public 1:20 4:14	101:5,16 128:9	realtime 115:17	72:6,19 84:12
9:11 154:25 157:5	129:10 131:15	116:3 118:14	86:13 89:15 90:7
158:24	148:10,11 151:23	reappear 101:18	91:24,25 92:3,11
punished 32:18,22	quick 55:25	reason 79:21	92:13 95:2,21
purporting 139:20	quickly 61:3 108:7	100:17 132:6	96:13 100:13
purposes 117:5	125:16,19 135:24	158:5	103:3 106:9
pursuant 1:21	quite 17:13 48:4	reasons 32:10	108:21 109:17
9:24 37:8 91:4	59:19 105:3	140:17	110:19 112:16
99:21	quote 43:20	recall 48:23 65:10	132:5 133:14,17
pursuing 28:24	139:21	74:7 75:10 76:24	135:13 136:23
put 31:13 66:22	r	77:20,21 78:15	137:10 138:21
70:23 90:17	raise 129:18	79:15,24 97:24	142:12
113:23 148:13	raised 47:3 53:6	98:4,7,10,17 99:12	recommend 85:20
pyramid 38:7	58:25	101:21 103:4	recommendation
q	range 151:5	111:3,4,16,18	77:13 85:8
q3 25:21	ranking 150:15	118:17,19,22	record 5:3,15 6:25
q4 25:22	rate 38:22 62:11	119:2 120:10	18:3 19:25 22:20
qualified 107:4	143:24	131:14,19,23,25	42:21 44:14,16,17
108:22	reached 43:24	135:6 136:2,3	44:20 54:6 56:24
quarter 17:24,25	71:9 135:25	139:10,22 142:7	58:22 66:25 67:6
question 4:10	reaction 140:10	146:23 147:13	67:20 71:22 73:10
10:16,18 11:22	reactions 69:24	150:20	76:6 80:13,22
18:6 22:17,24			81:4,9,15 89:6

[record - retained]

Page 20

90:6 91:3 94:19 97:8,10,16,17,21 119:21 128:23 148:14 149:25 151:4 152:7,11 153:2 154:5 157:11 recorded 5:16 recording 5:13 records 66:19 126:22 127:7 red 105:3 redacted 54:24 73:13 76:6 redaction 84:5 redactions 93:4 redress 27:24 28:4 rees 3:3 7:9 refer 23:8 28:2 45:25 52:3 reference 78:11 referenced 78:21 136:16 references 148:13 148:18,23 referred 25:3 34:17 150:8 referring 19:23 21:7 23:12 116:3 116:5,13 148:7 refers 18:15 refine 105:5 reflect 80:13 127:8 reflected 79:7,19 127:24 reflecting 23:15 84:5 reflects 66:16 89:6 refresh 40:10 62:24 66:11,18 71:18	refreshed 59:11 112:15 regard 104:21 136:14 148:14 regarded 33:3 regarding 23:9 37:10,20 46:2 57:11 regardless 19:14 20:4 regular 124:6 regularity 78:19 reins 42:17 reisbaum 2:7 8:14 relate 24:13 134:4 related 6:19 27:11 132:22 157:14 relating 131:15 149:16 relationship 23:18 24:2 29:8 99:8 relationships 61:21 105:13 relative 29:19 46:11 50:23 141:9 relayed 92:6 relaying 50:17 relevance 129:22 relief 147:4 religious 15:17 remarks 9:20 remember 25:18 31:15 59:18 66:9 71:8,12,14 78:20 78:25 79:3 92:16 98:14 102:16,19 103:12 104:25 111:25 119:25 126:12 127:2,6 133:9 134:7 137:11 138:23,24	139:3 141:21 147:5 remembering 31:23 remind 68:24 remote 6:10 remotely 6:23 remove 137:21 reopening 89:3 repeat 45:10 102:9 repeated 119:17 rephrase 46:25 130:10 reporter 1:20 6:14 9:7 149:2 reporting 158:2 represent 8:15 34:7 representation 23:4 45:21 representative 65:13 117:5,18 125:2 representatives 126:25 138:3 represented 7:19 61:21 representing 9:22 114:14 request 20:2 58:8 122:12 requested 119:20 128:22 requesting 149:7 require 58:6 required 11:13 65:12 104:4 reserve 8:2 100:22 101:23 reserved 4:10 101:12	reserving 97:11 129:22 resolution 59:22 resolve 52:20 72:17 resolved 61:3 112:5 respect 8:3 23:3 45:20 46:21 48:19 51:6 60:9 74:5 78:12 114:18 115:25 143:5 respective 4:4 28:22 respond 10:16 18:5 43:17 48:5 70:23 77:14 78:7 85:6,20 88:7 107:23 108:7 response 59:21 73:15,19,21 74:3 79:5 83:25 88:19 91:4 96:7 responses 73:2 responsibilities 39:7 responsible 33:10 34:3,6 38:10,15 responsive 108:4 rest 53:21 56:17 56:19 63:13,22 72:10 80:9 90:14 90:18 92:21 restaurant 28:21 141:20 result 39:10 92:14 115:21 116:12,17 118:12 results 115:12 retained 102:20 102:21 103:5,10
--	--	--	--

[retained - settle]

Page 21

103:11 154:9 retired 59:14,18 retirement 61:10 retiring 62:19 return 17:2 35:8 35:19 69:25 returned 17:9 returning 35:22 reveal 22:25 45:18 58:7 revealed 146:14 review 54:4,12,22 57:6,13 58:23 72:21 95:16 reviewed 80:12 131:20 revolved 145:22 richman 1:19 6:15 9:12 157:5,23 right 11:25 17:17 20:12 64:20 69:7 76:13 77:20 82:5 82:9,23 84:20,21 84:24 86:3 90:10 91:22 97:12 101:12,23 111:5 111:13,14,15 112:12,14,17,19 118:3 124:10 130:21 131:18 132:11 137:20 141:8 142:3,7 151:15 152:19 153:6 rightness 49:9 rights 8:3 rings 145:6 road 2:4 role 23:24 31:6 36:14 37:7 64:23 64:25 66:7 102:13	103:8,14,17 105:11 roles 38:11 rolled 39:8 106:16 room 6:22 138:6 rooms 70:9 route 123:7 royalties 80:5 royalty 79:11 rudimentary 46:17 rule 91:5 148:3 rules 1:21 10:7 113:18 118:11 runway 77:23 144:20	saying 31:12 73:22 79:9 85:15 86:15 88:6 89:2 93:19 says 85:3 88:10 123:20 scarsdale 6:11 16:16,18 scenes 140:22 scheduled 59:16 school 13:25 14:2 15:14,17 16:15 103:20 scientific 35:11 scientist 108:20 scny 150:4 screen 20:12 54:10 74:14 76:21 90:18 scroll 76:20 scrupulous 98:25 scully 3:3 sd 111:11 sealed 19:4 sealing 4:5 seasoned 61:18 second 7:23 25:25 28:20 54:17 63:23 67:18 68:6 71:14 76:4 93:2 109:25 112:7 127:2 135:23 137:14,17 138:2 143:20 152:21 see 18:9 27:11 44:11 54:10 58:12 59:20 68:7,8 72:20,22 73:3,20 73:21 74:20,21 76:12 77:16 79:9 79:12 82:8 83:16 83:18 84:3,9,18,25 86:5 88:21 90:12	92:8 93:6,19 94:8 95:17 96:4,5 105:25 108:3 122:19 126:22 129:25 seeing 74:11 131:24 seeking 27:23 28:3 seen 26:9 64:4 73:8,18 95:18 seminar 142:15 145:8 send 73:17,23 85:7 88:25 senior 137:25 sense 69:16 98:20 141:15 150:18 sensitive 5:6 sent 18:8 119:9 sentence 94:8,12 sentences 43:20 54:24 separate 86:13 139:21 143:21 separation 31:9 42:23,24 september 53:8 sequentially 143:15 series 75:25 serious 52:8 serves 70:5 88:16 services 15:17 serving 36:20 session 30:8 sessions 15:15 set 64:10 147:2 151:4 157:9,19 setting 94:2 settle 111:24 119:15 122:9
	s		
	s 1:5 5:19 155:10 158:5 sakaguchi 137:24 sakiguchi 41:19 san 30:8 34:18 41:17,19,19 55:4 56:12 68:20 71:15 79:22 82:14,15 83:18 86:15 108:14,20,21 109:21,21 112:2,6 112:18 137:18,18 137:23,24 150:9 150:11,13 sanders 12:18 23:13,16,21 33:10 sat 15:15 38:6 103:19 satisfactory 112:22 saw 26:13 66:19 105:22 135:8 147:22		

[settle - spent]

Page 22

123:15 150:19 151:7 settled 111:20 127:21 130:4 settlement 23:10 24:21 37:20 46:3 46:8,22 47:22 48:22 49:11 50:20 50:23 51:9,14,19 51:21 52:19 55:25 60:20 64:19 65:3 65:8,14,19 70:13 71:7,9,11 77:2,15 78:4 80:3 83:10 83:10 87:19 88:8 91:6 98:18 111:2 112:8,22 113:6,10 113:14,20,21 114:10,13,15,22 116:25 117:24 118:5 119:14 120:5,13,22 121:9 121:11,13,15 122:3,6,12,24 123:11,14 124:4 124:14,19 126:8 126:15 127:24 129:5,6 130:12,15 132:9,24 133:12 133:21 137:15 138:17 142:22 146:4,12,13 147:2 147:6,8,10 148:15 149:17,18 150:23 151:5 settlements 129:16 seven 15:9 shake 79:23 shaking 77:19 share 53:20,21 56:16 63:12	shared 60:2 sharp 43:8 sharper 100:13 shearman 2:11 7:18,20 sheet 158:2 shining 121:18 shocked 142:17 short 59:21,22 shorthand 1:19 shortly 38:23 89:4 102:21 103:10 show 56:15 66:15 77:24 showing 76:17 shutting 54:20 shuttle 43:12 siachos 7:14 sick 131:21 132:2 135:7,12 side 51:17 99:10 110:6 118:9 120:20 123:21 138:25 140:4 sides 43:14 70:4 signature 157:21 signed 4:13,15 significant 64:23 64:25 silly 77:4 simply 109:10 single 28:7 117:12 sit 10:20 66:12 88:18 sitting 31:17 70:4 98:6 115:9 119:23 126:11 137:10 138:6 situation 29:2 115:8 121:7	situations 109:20 six 24:12 85:18 86:9 88:15 144:16 skeptical 56:13 skilled 107:7 skills 107:12 sleeves 39:8 106:16 slighting 51:24 slowed 93:3 smaller 78:3 smart 115:13 smith 130:25 131:3 social 143:21 socialize 13:22 socialized 15:20 16:5 socially 103:20 somebody 117:17 somewhat 56:5 71:10 76:24 125:8 son 15:10 soon 85:8 sophisticated 61:19 sorry 19:8 27:9 29:2 31:14,22 34:15 38:21 39:24 54:19 57:21 80:18 83:16 84:13 95:15 128:18,24 130:9 131:4 133:13 138:20 143:11,25 145:21 146:23 150:20 153:24 sort 28:25 38:6 39:7 49:8 51:23 52:5 62:14 69:20 73:2 77:18 98:25 99:10 115:7	125:12 140:3 152:22 sounds 88:13 source 124:18 southern 1:3 6:6 111:8 114:7 sozio 3:10 6:12 speak 17:11 34:16 57:22 100:5 speaking 20:15 74:4 96:24 104:14 special 33:5 70:22 specialization 12:19 13:4 specific 39:13 43:20 48:11 56:11 78:21 79:2,25 82:17 85:11,24,25 87:25 88:2,9,23 89:10,11 92:16 98:4 99:13 102:11 105:21 115:4 118:20 119:25 120:10 122:21 133:17 144:21 147:10 specifically 14:13 14:19 32:22 53:7 59:4 74:4 75:7,13 75:22 78:13 98:15 124:12 specifics 47:9 specified 114:16 speculate 27:7 speculating 100:6 speed 125:21 spelled 7:16 spend 52:11 spending 153:12 spent 30:10 153:15
--	---	--	---

spirits 105:4 spite 75:16 split 43:14 70:8 85:16 144:16 spoke 15:2 41:15 41:18,22 42:18,18 42:19,22 78:18 92:14 126:20 137:3 141:18 spoken 13:14 14:5 14:8,18 31:8 77:12 78:11 92:9 142:4 148:2 spouses 28:22 stake 50:8 stakeholders 41:20 59:6 108:16 116:6,8 118:4,15 124:7 stamp 21:13 68:5 stamped 53:24 54:7 56:24 57:3 63:18,25 67:13,20 67:23 72:12,14 74:24 76:3,10 81:21,24 87:5,14 90:19,23 92:22,24 95:4,6 155:14,16 155:18,20,22,24 156:2,4,6,8,9,10 156:12,14 stand 44:16 80:24 97:15 152:3 standards 49:3 start 41:13 62:22 82:3 101:9 started 77:2,4 startle 106:2 state 1:20 6:24 7:3 9:12 60:6 66:25 149:25 157:6	stated 70:24 94:20 118:25 statement 86:7 states 1:2 6:5 24:17 61:8 75:8 95:24 96:7 stay 75:8 stayed 112:19 staying 49:8 steady 43:15 step 84:14 sterling 2:11 7:18 7:20 stiegler 47:19 48:3 70:6,24 72:23 73:7,11,18 77:2 78:7 92:9 120:25 133:23 135:25 stiegler's 77:14 88:17 91:7 stipulated 4:3,8,12 stipulation 150:2 stipulations 1:22 4:2 stop 115:15 strategy 48:20 51:5 56:14 62:12 88:24 street 2:12 streetfighter 49:6 strike 144:23 string 54:13 strokes 14:11 strong 73:7 stuff 87:2 style 75:15 106:22 subject 8:9 23:11 46:4 143:9 subpoena 9:25 153:9	subscribed 154:20 158:22 subsequent 42:16 80:3 82:13 132:15 subsequently 36:4 38:19 41:22 65:22 substance 14:19 46:12 58:7,9 substantive 14:16 succeed 51:22 successful 43:10 71:11,20,23 successfully 35:19 59:9 112:5 sufficiently 88:10 suggest 88:22 133:11 suggested 86:10 suggesting 83:4 suggestion 83:23 suit 145:25 suite 2:4,12 sum 35:3 113:7,15 113:17 123:13,16 summer 17:14 18:12 20:22 sun 121:18 sunday 15:16 suppose 126:21 sure 14:4 18:9,12 19:11 20:9,24 21:12 22:14 28:5 28:12,19 38:4 40:9 42:20 43:7 48:25 50:22 51:13 54:18 58:17,18,21 62:7 66:19 67:4 69:3 71:17,21 72:6,25 73:5,9 76:22 83:6 89:5 90:5 93:5 94:18	99:8 101:2,4 104:13 106:14 107:17,24 114:11 114:25 118:14 120:23 122:4 125:20 143:17 146:25 152:25 surprise 99:11 125:17 surprised 32:4 56:4 60:16 93:20 125:8 140:13,15 surprises 21:14 suzie 33:17,20 swear 9:7 sworn 4:15 9:11 10:13 154:20 157:9 158:22
t			
t 155:10 tab 18:7 26:7 table 31:18 60:21 140:4 tack 62:11 tactless 94:16 tail 24:10 take 5:13 11:13,18 11:20,21 13:7 25:24 31:5 44:16 45:7 51:6 54:4 56:18,20 63:14,17 66:24 67:9 68:4 69:13 70:22 72:9 73:10 74:17 75:23 75:24 78:9 79:4 80:7,10,24 81:4,18 82:18 84:2 85:2 85:25 86:17 90:15 90:21 92:19 93:8 95:3,23 96:14,16 97:8,9 123:22			

[take - totally]

Page 24

151:25 taken 1:19 5:17 10:25 11:5,8,12,15 103:7 takes 59:9 100:3 takimoto 41:19 55:4 56:12 82:15 137:23 150:9,11 150:13 talked 31:23 36:22 135:8 152:16 talking 37:18 47:4 47:9 121:6 127:16 tank 51:15 tax 38:16 team 114:23 116:16 technical 114:7 technically 37:3 telephone 30:17 92:6 147:15,20 tell 10:13 11:9 34:19 86:11 110:22 115:22 140:7 ten 109:5 121:4 123:20 tenderize 62:14 tennis 143:24 term 129:3 136:14 136:17 terminated 27:24 28:4 31:25 139:12 140:12 141:17 142:3,19,23 144:6 144:9 termination 29:20 141:24,25 145:25 terms 31:9 33:25 38:11 77:18 122:17 123:14	127:24 149:18 testified 9:14 39:14 63:2 102:6 103:18 152:13 testify 50:11 51:2 testifying 10:19,21 111:19 testimony 14:20 16:14 29:24 37:9 37:14 39:18,22 55:18 60:5,7 62:24 68:18 89:7 89:8,16 94:20 154:6 157:8,11 text 76:21 thank 9:15 20:10 20:18 21:17 45:8 53:18 55:3 69:4 85:3 87:12 89:2 100:25 115:24 123:23 151:24 153:8,17,21 thanks 45:9 thing 47:13 59:7 67:16 99:11 153:14 things 87:21 109:22 111:10 136:13 139:4 141:2 153:12 think 14:23 16:10 16:18 17:13,23 20:21 29:10 33:3 36:10,20 41:14,23 46:15,17 47:24 56:3 59:25 60:15 61:15 63:5 72:7 77:5 79:21 88:16 96:16 105:20 108:3 111:4 114:6 117:20 118:2	119:11 124:11 125:12 130:6 131:12,13,17,18 136:4,4 141:23 142:11 145:7 148:5 150:10,13 thinking 60:25 61:5 77:21 third 17:25 thought 72:18 77:17 95:16 153:14 thoughtful 69:24 thoughts 78:6 thousands 61:6 three 15:24 152:11 154:8 time 1:18 4:11 7:4 11:19 16:5 17:4,7 17:15,19 21:22 22:5,7 23:16 30:13,19 31:5 37:13 39:14,19 41:24 42:8 44:20 52:6 55:7,12 59:10,22,23 62:13 62:20,23,25 63:7,9 63:10 64:4 66:19 68:25 69:11,11 76:25 77:23 78:16 87:23 89:21 91:16 94:23 97:14,17,21 100:22 104:24 110:2 114:16 118:18 127:17,20 127:25 128:3,5 132:15 134:21 135:7,12 139:11 142:4 147:18 148:2 151:24 153:8,13,15,18	154:11 times 15:23 29:23 49:3 71:3 139:2 title 102:24 103:7 today 7:25 10:20 11:14 14:20 20:6 21:8 22:25 23:6 25:15 26:10,21 29:24 45:13,18,25 66:12 73:8,19 95:19 97:5 98:6 100:10 101:10,14 119:23 126:11 131:20 137:10 148:14 152:17 153:14 today's 25:8 154:6 told 20:21 25:16 32:21 99:24 100:9 140:7,17 tomoji 34:16 41:17 53:5 57:10 58:24 71:15 82:13 83:9,23 85:3 86:6 86:14 93:19 108:14 112:2 tomoji's 58:19 ton 38:13 tone 47:5 48:4,19 69:12 70:17 tony 47:19 78:7 91:7 top 38:7 78:9 79:7 79:19 109:16 topic 28:23 50:25 99:14 125:6 126:20 topics 109:6 total 154:7 totally 126:10 135:11 138:18
--	---	---	--

[totally - way]

Page 25

144:7,9 tow 76:23 transcript 149:3 149:10,16 157:10 transpired 38:25 treated 148:19 trial 4:11 25:12 155:13 tried 35:17 trip 124:9 troutman 12:18 13:3 23:13,16,20 33:10 true 86:4 157:10 truth 10:13 11:10 99:24 100:9 truthfully 10:21 try 43:21 121:5,20 trying 17:13 31:15 44:9 54:25 107:22 143:21 turn 5:9 turned 29:21 120:24 125:15,19 turning 112:24 113:4 two 7:19 10:17 18:7 24:7 35:5 41:9 48:22 51:13 67:7 69:12 81:15 85:17 86:9 102:8 108:18 112:3,16 115:17,20 126:19 140:17,20 143:14 143:18 151:9 152:2,6,15 type 35:2 110:21	ultimate 148:15 ultimately 19:15 43:24 56:6 60:22 62:16 71:19 130:4 137:22 unambiguous 35:16 uncomfortable 31:14 143:4 understand 10:4,7 10:23 14:18 16:13 26:17 37:22 46:15 50:15 54:16 58:18 85:9,13 93:11,23 93:25 101:19 116:18 122:4 124:22 139:5 141:11 146:8,16 understanding 36:6,18 40:22 51:4 52:13,21 65:17,25 85:11 87:22 90:5,7 95:25 116:22,24 117:16 139:14 149:19 understood 10:18 10:22 11:23,24 61:12,14 113:13 134:20 137:21 141:6 unfailing 47:16 unit 5:16 80:20 81:8,14 152:5,6,10 united 1:2 6:5 61:8 units 154:8 unmute 100:4 unsuccessfully 44:10 unsupportable 60:19	unwarranted 140:3 update 85:20 upload 21:20 uploading 53:20 upset 94:10 use 36:8 136:14,16 usually 114:15 utsunomiya 34:17 34:18 41:17 71:15 82:14 86:15 108:14,20 109:21 112:2 137:18 uttered 92:16 v v 158:3 vagnini 2:3 vague 136:13 valli 2:3 value 130:13 138:10 values 71:4 various 32:9 38:14 venture 34:23,24 verbal 147:15,19 veritext 6:13,16 44:12 154:9 158:2 vernacular 52:4 versa 57:24 versus 5:20 vice 57:24 video 1:16 5:12,16 videographer 3:10 5:2 6:14 8:22 9:6 9:15 44:15,19 80:15,18,23 81:3,7 81:13 97:7,15,20 121:24 152:3,9 153:23 154:4 view 117:7 144:14 144:15	viewed 117:12 violation 35:23 virtual 1:12,16 6:10 w wait 56:19 63:21 63:23 waiting 21:2,19 24:23 waived 4:7 waiver 7:25 wand 51:18 want 10:11 18:2 19:25 21:21 22:10 22:13 24:24 28:15 32:2 37:16 42:20 44:2 50:11 54:6 54:11 56:23 58:21 63:21 67:5,16 73:23 74:8 76:5 79:10 87:3 88:7 88:14,17 89:5 94:18 121:3 122:4 127:4 136:5 139:18,23 141:6 145:6 148:17 wanted 18:8,9,12 19:11 31:12 51:11 51:13,20 59:6,8 61:2 72:25 73:5 125:24 133:11 140:6 152:25 wanting 125:19 wants 148:21 washington 2:12 waters 60:16 61:25 way 11:6 49:2 55:5 75:18 76:23 77:25 78:2 83:12 93:24 100:16
u			
u.s. 29:16 36:20 59:10 71:15 75:20			

[way - zoom]

Page 26

106:3 107:23 116:14,23 117:7 120:11 126:12 129:25 133:17 135:4 139:18 141:5,7,15 143:23 144:11,17 157:16 we've 29:3,22 101:9 139:21 week 78:24 131:2 131:7,16,22 132:2 133:2 weird 135:22 went 30:11 42:23 79:22 111:23 112:15,18 137:13 141:19 whereof 157:18 whispering 5:7 white 2:14 8:17 12:8,11,16,21 13:10 23:13,25 38:23 112:13,14 112:17 wife 16:2 143:23 win 79:12 wish 133:13 withdraw 110:10 136:8,20,25 137:7 withdrawn 11:12 13:15 14:25 89:17 92:2 107:10 108:9 121:12 135:21 witness 2:15 9:8 9:10 18:19 19:6 22:23 23:6 45:16 45:23 47:24 58:4 58:7,12 80:25 97:6,12 100:5 101:2,11,21 128:14,15 155:5	157:8,12,18 158:4 wondered 139:3 word 116:15 words 36:13 92:16 139:19 wore 40:21 work 13:6 17:16 22:5,8 23:3,21 36:25 45:20 56:14 103:21 104:9 110:4,12,14,16 113:2 130:24 131:6 132:17 140:20 152:21 153:3 worked 17:20 43:8 105:5,9 152:14 working 23:23 24:2 32:5 70:11 98:17 102:4 115:20 125:10 works 108:16 122:3,3 world 22:2 66:17 worms 20:20 worth 134:8 wow 125:14 wrapped 59:7,8 write 92:9,18 writing 75:18 105:6 written 85:23 87:25 108:8 133:23 150:22,25 151:3 wrong 40:2 105:22 136:6 141:9 wrongdoing 56:9 wrongful 145:20 145:24	wrote 72:22 82:12 x x 1:4,11 37:4 43:18 51:20 86:16 115:16 122:8,10 122:12 123:2 155:2,10 y y 37:4 43:18 yeah 17:22 18:7 28:24 68:14,17 72:20 77:20 78:23 83:7 88:5 90:11 107:16 108:17 110:2,13 111:22 112:12 113:3 117:20 128:3 131:9,12,17,17 152:20 year 16:9 18:10 35:18 year's 78:25 years 12:12 13:7 15:9,24 16:22 31:16 52:24 61:23 119:23,24 120:9 yep 72:20 yesterday 26:11 york 1:3,21 2:5,9 2:9,16,16 3:5,5 6:7,11,13,16 9:13 17:2,9 154:10 157:6 158:2 z zach 15:8 zoom 1:12,16 6:10
--	--	---

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.